87-1212

No.

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

JEROME GREENE, NORMAN PECK AND PETER SHARP,
Appellants,

-against-

MANUEL MIRABEL, DEPUTY COMMISSIONER,
NEW YORK STATE DIVISION OF HOUSING
AND COMMUNITY RENEWAL,
Appellee,

VICTOR BONOMO, CHARLES HERMAN,
JOHN D. GREEN, LAZAR AND LEA GOTTFRIED,
BERNARD GOLDEN, RAY BERMAN, HOWARD SHAVEL,
JAMES L. MARCUS, HYMAN SUTTON, MICHAEL FREEDMAN,
LESTER LOCKWOOD, PAUL WEISSMAN AND SONIA REESE,
Appellants.

ON APPEAL FROM THE SUPREME COURT, STATE OF NEW YORK,
APPELLATE DIVISION, FIRST DEPARTMENT

JURISDICTIONAL STATEMENT

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EDITOR'S NOTE

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QUESTION PRESENTED

New York City has in place a statutory system for the control of residential rents. The New York system is facially valid in the sense that it purports to allow landlords to collect rents which enable them to earn a reasonable return on the capital value of their property. Specifically, by statute, a landlord who is not able to earn a statutorily prescribed return of 8-1/2% on the capital value of his property is entitled to "hardship" relief -- he is entitled to administratively ordered increases in the collectible rent of sufficient dollar amount to allow the landlord to achieve the statutory 8-1/2% return on capital value.

As the record below based on undisputed facts demonstrates, however, the beneficial and remedial effects of the "hardship" provisions of the New York rent control system are completely eviscerated by another provision of that statutory scheme. The New York Legislature, in an effort to prevent rent increases beyond a tenant's supposed ability to pay, imposes an across-the-board limitation on the amount rents may go up in any one year in rent-controlled apartments. That limitation -- 7-1/2% per annum, as applied to the undisputed facts here -- prevents these appellants from obtaining a reasonable return on the capital value of their property and, in consequence, operates to confiscate their property in violation of their constitutional rights.

In *Pennell v. City of San Jose*, 228 Cal. Rptr. 726, 42 Cal.3d 365, 721 P.2d 1111 (1986), *app. granted*, 47 S. Ct. Bull. No. 25, A2 (U.S., March 2, 1987) (No. 86-753), this Court recently heard argument on a constitutional challenge to a San Jose, California rent ordinance redolent of New York's 7-1/2% across-the-board limitation of rent increases. In *Pennell*, the provision of the local regulation being challenged per-

mitted local administrators to reduce an individual tenant's rent below the amount the landlord would otherwise be entitled to collect based on the individual tenant's financial inability to pay.

Against this background, the question presented for review is, as follows:

Does a system of local rent control which results in individual landlords having rates of return on the value of their property which are and will remain as low as 1% or 2% for the indefinite future by prohibiting annual rent increases beyond an artificially determined, across-the-board limitation of 7-1/2% per annum deprive the landlord of his constitutional rights under the Fourteenth Amendment?

PARTIES TO THE PROCEEDING

The caption of the case contains the names of all parties to the proceeding.

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OPINIONS BELOW

There are no reported opinions below. The Supreme Court, New York County, issued an oral ruling after argument of appellants' petitions. (A copy of the transcript of the oral argument is contained in Appendix A.)

The Appellate Division, First Department, affirmed, without opinion, the judgments of the Supreme Court, New York County (Appendix B).

Thereafter, appellants sought to appeal as of right to the New York Court of Appeals. The court, however, dismissed that appeal *sua sponte* (Appendix C) and, subsequently, denied appellants' motion for leave to appeal (Appendix D).

JURISDICTION

This is an appeal from an order filed on April 7, 1987, in the Appellate Division, First Department. That order affirmed three judgments of the Supreme Court, New York County, which had dismissed three petitions brought by appellants pursuant to Article 78 of the New York Civil Practice Law and Rules. Article 78 sets forth New York's procedural mechanism for challenging the decisions of governmental administrative bodies.

Appellants sought by their Article 78 proceedings in the courts below to overturn administrative orders of the District Rent Office of the Office of Rent and Housing Maintenance of The City of New York, dated September 8, 1983 (Appendix E), as modified by the Order and Opinion of appellee, Manuel Mirabel, Deputy Commissioner of the New York State Division of Housing and Community Renewal, dated May 14, 1985 (Appendix F).

As noted, appellants' appeal as of right to the New York Court of Appeals was dismissed by that court, *sua sponte*, and appellants' subsequent motion for leave to appeal was denied by an order dated October 13, 1987 (Appendix D).

A notice of appeal to this Court was timely filed in the Appellate Division, First Department on January 8, 1988 (Appendix G).

This appeal is being docketed in this Court within 90 days from the order of the New York Court of Appeals denying appellants permission to appeal. 28 U.S.C. § 2101(c).

This Court has jurisdiction of this appeal under 28 U.S.C. § 1257(2).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant Constitutional provisions involved in this appeal are:

> *U.S. Constitution,*
> *Fourteenth Amendment, Section 1:*
>
> No State shall . . . deprive any person of life, liberty or property, without due process of law; nor deny to any persons within its jurisdiction the equal protection of the laws.

The relevant provisions of the New York City rent control law are as follows:

> *Official Compilation of Codes, Rules & Regulations of the State of New York, Title 9, § 2202.8: Return on Capital Value.*
>
> (a) a landlord may file an application for an increase in maximum rents on the ground that the current maximum gross building rental established pursuant to section 2201.4 or 2201.5 of this Title does not equal the sum of:
>
> (1) the real estate taxes, water charges and sewer rents on the property;
>
> (2) the operating and maintenance expenses of the property;
>
> (3) an allowance for the vacancy and collection losses on the property; and
>
> (4) a return of 8–1/2 percent on capital value which, except as provided in sub-divisions (b) and

(c) on this section, shall be the equalized assessed value obtained by multiplying the current assessed value of the property by the current equalization ratio established by the New York State Board of Equalization and Assessment pursuant to article 12–A of the Real Property Tax Law.

Official Compilation of Codes & Regulations of the State of New York, Title 9, § 2201.6: Collectibility.

(a)(1) No new maximum rent established pursuant to section 2201.4 of this Part, or adjustment pursuant to section 2201.5, 2202.8, 2202.9 or 2202.10 of this Title, or any combination thereof, shall increase the rent collectible from a tenant in occupancy by more than 7–1/2 percent in any one calendar year, except as provided in section 2202.7 of this Title.

STATEMENT OF THE CASE

Appellants respectfully request that this Court note probable jurisdiction of this appeal. Alternatively, appellants respectfully request that this jurisdictional statement be treated as a petition for a writ of certiorari and that certiorari be granted. 28 U.S.C. § 2103.

This appeal concerns the constitutionality of the application of the New York City rent control system to undisputed facts. The administrative orders challenged by appellants are an application of the rent control law in a manner which deprives appellants of due process of law as guaranteed by the Fourteenth Amendment. The orders limit appellants to a return on the capital value of their property which is so unreasonably low and which will be effective for so long a period that the orders amount to confiscation.

The confiscation results because of New York's across-the-board limitation of per annum rent increases to 7-1/2% even in instances where the administrative agency determined that increases of a much larger magnitude are required if landlords are to be enabled to earn a reasonable return on the capital value of their property, and in the face of another provision of New York law which prescribes an 8-1/2% return on capital value for landlords of rent-controlled residential property.

We assert this constitutional claim in full recognition that we do not deal with a blank slate: numerous cases have rejected constitutional challenges to various aspects of local rent control schemes. But, as we show, in recent years this Court and other lower federal courts have been willing to revisit prior precedent and to consider placing limitations on the power of states and municipalities to regulate residential

rents. *See Pennell v. City of San Jose,* 228 Cal. Rptr. 726, 42 Cal.3d 365, 721 P.2d 1111 (1986), *app. granted,* 47 S. Ct. Bull. No. 25, A2 (U.S., March 2, 1987) (No. 86-753); *Hall v. City of Santa Barbara,* 797 F.2d 1493 (9th Cir. 1986); *Chicago Board of Realtors, Inc. v. The City of Chicago,* 819 F.2d 732 (7th Cir. 1987).

These cases demonstrate that there is no conclusive presumption that a local system of rent regulation can pass constitutional muster simply because it is labelled "rent control."

This fresh judicial interest in rent control appears to be partially a result of a growing consensus that rent control is a self-defeating policy -- rather than increasing the quality of existing housing and encouraging new investment in rental housing, rent control actually exacerbates the problems it is intended to alleviate. *See Hall v. City of Santa Barbara, supra,* at 1503, n.26.

This appeal vividly demonstrates the fashion in which a local system of rent regulation can operate to produce an economically irrational, confiscatory result and deprive appellants of their constitutional rights.

The Facts

(a) Appellants. In 1965 and 1966, partnerships of which appellants were the sole partners, purchased the apartment buildings in which the apartments that are the subject of this appeal are located. The apartments were subject to New York's rent control system. Thereafter, the partnerships became the sponsors of plans to convert the premises to cooperative ownership. The plans were so-called "non-eviction" plans and became effective in 1972 and 1973. Under New York law, tenants in the buildings who did not desire to pur-

chase their apartments under the plans of cooperative conversion could not be evicted, but were entitled to remain in their apartments and retain the benefits of the rent control system. Appellants, in consequence, became the owners of the unsold shares for the apartments occupied by those non-purchasing tenants (85, 98, 111).*

(b) The Apartments. The apartments are all in pre-World War II apartment buildings located in select neighborhoods in the Borough of Manhattan in the City of New York. The apartments at 444 East 52nd Street are just a few blocks away from the United Nations complex. 44 Gramercy Park North abuts Gramercy Park -- a private park in a desirable neighborhood where real estate values continue to be high. The building on West End Avenue is close to Lincoln Center and right in the middle of the trendy upper-westside area of Manhattan, with its high-priced clothing boutiques and chic restaurants (84, 97, 110).

(c) The Tenants. When the apartment buildings were converted to cooperative ownership in 1972 and 1973, the tenants who reside in the apartments that are the subject of this appeal remained as tenants at rent-controlled rents (85-86, 98-99, 111).

(d) The Rent Regulation Systems in New York City. In New York City, there are two separate systems of rent regulation, rent control and rent stabilization. The rent control system applies only to apartments constructed before 1947. The rent stabilization scheme, enacted in 1969, applies to almost all other New York City apartments, including most newly constructed rental apartments.

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*References are to the Record on Appeal filed in the Appellate Division, First Department.

The reason for this dual system of rent regulation was articulated by the New York Court of Appeals in *Sullivan v. Brevard Associates*, 66 N.Y.2d 489, 494–495, 498 N.Y.S.2d 96, 99, 488 N.E.2d 1208, 1211 (1985). Rent stabilization was described as a

> "compromise solution" under which rents of previously unregulated post–1947 housing could be regulated while "encouraging future construction of housing accommodations by allaying the fears of builders concerned about possible further extension of rent control to new construction" (*8200 Realty Corp. v. Lindsay*, 27 N.Y. 2d 124, 136–137, 313 N.Y.S.2d 733, 161 N.E.2d 647, *supra*). The Rent Stabilization Law recognizes the greater stringency of rent control regulation by imposing rent control of units as a penalty for landlords who fail to become or remain members in good standing of the Real Estate Industry Stabilization Association.

(e) The Automatic Rent Increase System of Rent Control. Maximum rent increases in New York City rent–controlled apartments are determined on a system–wide basis by the so–called Maximum Base Rent system ("MBR"), which went into effect in the early 1970s.

Prior to the institution of the MBR system, landlords of rent–controlled apartments in New York City had received only two rent increases since the end of World War II. The inadequacy of these increases had resulted in a "severe housing crisis" faced by New York City in 1970. *The Maximum Base Rents Formula: A Cost Index Approach to Controlled Rents*, 3 (1970).

The MBR system was designed, at least in part, to close a "rent gap" of $274 million -- "this growing difference between rents and costs which was in part a result of rent increase restrictions imposed on 1.1 million apartments by the old Rent Control Law." *Id.* at 8.

Local Law No. 30 of 1972 amended the New York City Rent Control Law, creating the MBR system, by introducing a system of computerized annual rent increases, devised by formula, for rent-controlled apartments in New York City. The maximum increase permitted by law was 7-1/2% per annum. Since 1972, the effective date of the MBR system, 7-1/2% increases have been granted each year.

As the undisputed facts here demonstrate, the MBR system, with its 7-1/2% limit on per annum increases, has not achieved what it was intended to achieve -- to raise the rents of rent-controlled apartments above costs and to give landlords a reasonable return so as to encourage the upkeep of rent-controlled apartments and to keep them in the housing stock. Through the 1970s and 1980s, such diverse economic developments as double-digit inflation, the Arab oil embargo, explosive growth in the New York City economy and steep increases in New York City real estate taxes have combined to push the growth in the expenses of owning and renting New York City apartments at a rate faster than the 7-1/2% MBR rent increases. Thus, the "rent gap" that existed in the early 1970s has not been closed and rent-controlled landlords are no better off today than they were when the MBR system was put in place. *See The ABC's of MBR: How to Spell Trouble in Landlord/Tenant Relations (Up Against the Crumbling Walls)*, 10 Col. J. of Law and Soc. Prob., 113, 155 (1974) (arguing that the 7-1/2% limit on rent increases will prevent landlords from ever receiving a reasonable return).

(f) Appellants' Applications for "Hardship" Rent Increases. In the early 1980s, faced with an existing system of MBR increases which simply did not allow appellants even to begin to earn a reasonable return on the capital value of their property, appellants turned to another statutory provision of the New York rent control system -- to wit, the provision

which entitles a landlord to file an application for a "hardship" increase if the maximum rent he might otherwise be entitled to collect does not allow him to earn a return of 8-1/2% on the capital value of his property. 9 NYCRR § 2202.8.

This and similar "hardship" provisions have been a fundamental part of New York's rent control scheme for many years. They were enacted in recognition that the overall statutory scheme of rent control could produce "hardship" for individual landlords who would otherwise not be able to earn a reasonable return on the capital value of their properties. The legislature, therefore, included in the rent control scheme provisions allowing for individual hardship applications.

The objective of these provisions has always been the same: to avoid the confiscatory result in individual cases from the general application of the rent control system. The hardship provisions are the constitutional failsafe of the rent control law. Thus, the "hardship" provisions of the rent control law must be meaningful, both procedurally and substantively -- as we now show, they are not.

In December 1982 and April 1983, appellants filed hardship applications with the appropriate New York City administrative agency seeking rent increases which would allow them to obtain a return of 8-1/2% on the capital value of their property. (The applications were filed with the predecessor agency of appellee Division of Housing and Community Renewal ("DCHR")) (86-87, 99-100, 112-113).

As a result of lengthy administrative proceedings, there was no dispute in the courts below as to the following: appellants and the DHCR agreed as to the capital value of appellants' property (Appendix F, pp. 4f, 12f, 20f); appellants' statement of operating expenses were subjected to a full

audit by the predecessor New York City agency to the DHCR; appellants and the DHCR agreed as to the size of the increases in the maximum collectible rent required to allow appellants to earn 8–1/2% in capital value (Appendix F, pp. 6f-8f, 14f-16f, 22f-25f); appellants and the DHCR agreed that appellants should get these increases (Appendix F, pp. 6f-8f, 14f-16f, 22f-25f).

The sole dispute between appellants and the DHCR -- albeit a dispute of constitutional significance -- was this: the DHCR refused to order immediate increases in rent in amounts sufficient to permit appellants to earn an 8–1/2% return on capital value. As to a few apartments the DHCR did immediately increase rents to the breakeven point so that rents equalled expenses, but then as to those apartments and all other apartments limited yearly increases of rent over the breakeven point to 7–1/2% per annum of the maximum collectible rent -- sometimes stretching those increases out over years -- until such time as these yearly 7–1/2% increases equalled the total increase that the DHCR itself acknowledged was necessary to permit appellants to earn an 8–1/2% return on capital value (Appendix F, pp. 6f-8f, 14f-16f, 22f-25f).

The DHCR adopted this methodology -- yearly increases limited to 7–1/2% of the rent -- in obedience to a separate provision of the rent control law (9 NYCRR § 2201.6, previously cited *see* p. x, *supra*), which places such a limitation on yearly increases, across-the-board for all tenants in all rent-controlled apartments (Appendix F, pp. 5f, 13f, 20f).

(g) The Financial Impact on Appellants of the DHCR Orders. In the courts below, appellants demonstrated by a series of sophisticated, but accurate, calculations for each apartment at issue that this 7–1/2% limitation on yearly

increases made it a certainty that appellants would not earn their statutory return of 8-1/2%, or even a fair return, until many years into the future, if at all (272-286, 302-318, 334-344).

We showed that the central fallacy in the DHCR's methodology defied economic reality: it assumed that over the extended period of time during which yearly increases of rent were limited to 7-1/2% in order to reach a total increase sufficient to generate a return of 8-1/2% on capital value, there would be no rise in the operating expenses of the apartments and no inflation. And, of course, at the end of that extended period, the capital value of the property will also have increased.

Thus, as the uncontested facts below dramatically illustrated, the hardship procedure under rent control in New York, as applied to the facts here, was totally illusory. What the hardship provisions gave, the provisions providing for a limit on yearly increases immediately took away. The DHCR's orders limited appellants to a return on the capital value of their property which was so unreasonably low and which was effective for so long a period that the orders amounted to confiscation.

The chart in the record below for apartment 6A at 444 East 52nd Street is reproduced as an example on the following page. In summary, line 7 of the chart shows, under the wholly implausible assumptions of the DHCR, that after six years of 7-1/2% ordered increases, appellants would be earning an 8-1/2% return in 1988 on 1982 capital value. On line 14, the actual return on 1982 capital value in 1988, once the undisputed annual increases in expenses are taken into account, is 2.46%. The record below contains a similar chart for each apartment (272-286, 302-318, 334-344).

444 East 52nd Street: Hardship Application

Docket Number: 2A040645/59
Alwbl.Monthly Net
$334.23

Apt.: 6-A

Shares: 650

A) Rent & Expenses by Month
B) DRO Computed Return (A.M.N.R.) =

$334.23 x 12 = $4,010.76
DRO Capital Value:
$4,010.76 = $47,185.00
.085

	1982	1983	1984
1. Rent, incl. fuel surcharge per DRO (8/26/82) (A)	$ 627.49	$ 627.49	$ 627.49
2. Ordered (5/14/85) Rent Increases	45.69	49.12	52.80
3. Cumulative Ordered Hardship Rent Increases	45.69	94.81	147.61
4. Total Rent Ordered (Line 1 + Line 3)	673.18	722.30	775.10
5. 1981 Operating Expenses - Audited by DRO	658.71	658.71	658.71
6. DRO Computed Cash Flow (Line 4 - Line 5)	$ 14.47	$ 63.59	$ 116.39
7. DRO Imputed Capital Value (Line 6 x 12 mos. ÷ 8.5%) (B)	$ 2,043.00	$ 8,977.00	$16,432.00
8. DRO Rate of Return (Line 6 x 12 mos. ÷ $47,185.00)	.37%	1.62%	2.96%
9. Operating Expenses: Prior Year Expenses	$ 658.71	$ 658.78	$ 713.96
10. Current Year Increase in Expenses (C)	27.07	28.18	33.20
11. Total Expenses - Current Year (Lines 9 +10)	685.78	713.96	747.16
12. Actual Cash Flow (Line 1 - Line 11)	$ 12.60	$ 8.34	$ 27.84
13. Actual Imputed Capital Value (Line 12 x 12 ÷ 8.5%)	N/A	$1,177.	$3,944.
14. Acutal Rate of Return (Line 12 x 12 mos. ÷ $47.185.00)	N/A	.21%	.71%

C) Rate of Inc. in Expenses
1982 @ 4.11% (Actual)
1983 @ 4.11% (Actual)
1984 & later years @ 4.65%
(% Chng. C.P.I. [NY/NJ]
12/83 to 12/84)

1985	1986	1987	1988
$ 627.49	$ 627.49	$ 627.49	$ 627.49
56.76	61.02	65.60	34.46
204.37	265.39	330.99	365.45
831.86	892.88	958.48	992.94
658.71	658.71	658.71	658.71
$ 173.15	$ 234.17	$ 299.77	$ 334.23
$24,445.	$ 33,059	$42,320.	$ 47,185
4.40%	5.96%	7.62%	8.5%
$ 747.16	$ 781.90	$ 818.26	$ 856.31
34.74	36.36	38.05	39.82
781.90	818.26	856.31	896.13
$ 49.96	$ 74.62	$ 102.17	$ 96.81
$7,053.	$10,535.	$14,424.	$13,667.
1.27%	1.90%	2.60%	2.46%

In addition, we demonstrated the impact of real world economics to the courts below with the affidavit of Dr. Alan Greenspan, a distinguished economist and currently Chairman of the Federal Reserve System (345–356).

Dr. Greenspan showed that, even under the implausible assumption of the DHCR that there will be no increase in operating expenses, including real estate taxes, the challenged orders still substantially diminished the 1982 capital value of appellants' property. He wrote:

> To the extent that the orders of the rent control administrators in those proceedings, do not provide for immediate increases in rent necessary to allow the owners to achieve a return of 8.5% and, instead, provide for any phase in of profitability to reach the statutory 8.5% rate of return on capital, there is in effect a taking of property without due compensation. This is so because of the familiar economic concept that a stream of future income needs to be discounted to determine its current value to the recipient. (346)

Dr. Greenspan also showed that, once a rise in expenses is factored into the pertinent economic data, the fact of confiscation becomes all the more plain (348–349).

Thus, the charts and expert testimony from Dr. Greenspan demonstrated that, once the inevitable rise in operating expenses and the fact of inflation were properly taken into account, the return appellants would be able to earn on the capital value of their apartments was not the 8–1/2% return set forth in the law, but much lower returns in the neighborhood of 1% and 2%. This showing was not disputed by the DHCR.

What makes the result below even more extraordinary is that if appellants had done nothing at all -- if they had

never filed any hardship applications, if they had never pursued their administrative and judicial remedies -- under the MBR system now in effect for rent-controlled properties in New York City (which we previously described, *see*, pp. 4-6, *supra*) they would be in exactly the same position they are in now. This is so because the present MBR system provides virtually automatic increases of 7-1/2% in rent to landlords of rent-controlled properties.

Viewed in this context, in New York, the availability of rent increases for rent-controlled properties becomes no more than a shell game: the pea (a rent increase to which a landlord is entitled) is under some shell (either the MBR increase or the hardship system) -- but individual hardship makes no difference because the result is the same, a 7-1/2% yearly increase. The 7-1/2% limit means, in effect, that a landlord who starts out behind will never be able to catch up and receive a fair return.

(h) Appellants' Unreasonably Low Returns Are a Permanent Condition: Their Property Has Been Transferred to Their Tenants. In New York, there is still a further impediment to a landlord's ever achieving a reasonable return on the capital value of a rent-controlled apartment.

Under New York law, as long as the tenant complies with the lease, he or she cannot be evicted and can enjoy for life the right to the rent-controlled apartment. Then, the right to reside in a rent-controlled apartment can be passed on to family members because the term "tenant" under 9 NYCRR § 2202.2(o) also includes any family members of the tenant who "occupied the apartment for a period of time with the tenant with whom the landlord was in privity." *Herzog v. Joy*, 74 A.D.2d 372, 376, 428 N.Y.S.2d 1, 4 (1980) (sister may remain in occupancy at rent-controlled rent after tenant va-

cates), *aff'd*, 53 N.Y.2d 821, 439 N.Y.S.2d 922, 422 N.E.2d 582 (1981); *see also 2–4 Realty Associates v. Pittman*, N.Y.L.J., at 1, New York Supreme Court (December 15, 1987) (boarders who came to function as a "family unit" with deceased primary tenant obtained the rights to the rent–controlled apartment).

Thus, for all practical purposes, in New York, any "family member" who takes up permanent residence in the apartment before the primary tenant vacates inherits the rent–controlled apartment.

The bottom line for appellants is that their apartments have been effectively deeded to a tenant and to the tenant's family members, who can easily remain in possession of the apartment for an indefinite future. But, for this indefinite future, these apartments will be permanently subject to a system of rent control which deprives the landlord of any realistic opportunity to earn a reasonable return on the capital value of his property.

(i) The Decisions of the Courts Below. The New York courts ignored appellants' showing that the present system was irrational, confiscatory and a violation of appellants' constitutional rights. But not one of the courts below put in writing how it was that no constitutional violation had occurred.

THE QUESTIONS ARE SUBSTANTIAL

This appeal raises issues of public importance which should be decided by this Court. It is simply unfair and unconstitutional to select a particular class of property owners and force them to donate their property to a public purpose and make them finance a public benefit that should be the responsibility of the entire population.

In the courts below, appellants mounted a specific, factual challenge to the application of the existing New York rent control scheme to apartments owned by appellants at three Manhattan apartment houses. Appellants took each individual apartment and demonstrated with facts -- not global complaints about the unfairness of rent control -- how the rent control system had caused a confiscatory result.

Our legal arguments were equally specific: we pointed out that the cases have recognized under the due process clause of the Fourteenth Amendment that there is a point at which the return provided owners of residential property by an ongoing system of rent control is so low as to be a taking. That point, we said, has been reached here where the undisputed rates of return to appellants in 1988 on 1982 capital value -- seven years after the application for "hardship" rent increases were brought -- will have only reached, for example: 2.46% at apartment 6A at 444 East 52nd Street (272); or, .42% at apartment 9A at 44 Gramercy Park North (302); or, 2.15% at apartment 4A at 325 West End Avenue (317).

In response, appellees did not challenge a single aspect of appellants' factual presentation. The facts -- and, hence, the totally illusory nature of appellants' rights under the rent control system to receive reasonable returns -- were conceded.

Instead, the DHCR sought to justify the challenged limitation of yearly rent increases to 7-1/2% by constant references to legislative findings that such a limitation was necessary to prevent speculative, abnormal or unwarranted rent increases in light of the "emergency" caused by an alleged scarcity of rental housing.

As we previously noted, there is a growing consensus that this "emergency", which has existed in New York by legislative fiat for over 40 years, is a self-inflicted wound caused by rent control.

In any event, the rent increases sought by appellants below had none of the characteristics described above. Indeed, they were precisely the increases the DHCR itself determined, after a complete audit of appellants' books, were required to enable appellants to earn an 8-1/2% return on the capital value of their property. Appellants were not denied the increases -- rather, the increases were spread over such a lengthy period of time that they became totally illusory, all out of deference to a legislative determination that in New York tenants of rent-controlled apartments should never be required to pay annual rent increases greater than 7-1/2%.

The constitutional validity of that kind of legislative finding was argued before this Court in *Pennell v. City of San Jose*, 228 Cal. Rptr. 726, 42 Cal.3d 365, 721 P.2d 1111, *app. granted*, 47 S. Ct. Bull. No. 25, A2 (U.S., March 2, 1987) (No. 86-753). There, as noted, the Supreme Court of California examined a San Jose rent control ordinance containing a provision redolent of the 7-1/2% cap in this case -- the ordinance allowed the administrators to take into account a tenant's individual financial circumstances as a reason for denying rent increases greater than the automatic formula increases provided for in the ordinance. Landlords challenged

the constitutionality of this provision of the ordinance. The Supreme Court of California, by a 4 to 3 vote, upheld the constitutionality of the challenged provision.

This Court has just recently heard the merits of the landlord's appeal from the adverse decision of the California Supreme Court.

If anything, New York's across-the-board 7-1/2% limitation is even more suspect than the regulation challenged in *Pennell*. In San Jose, a landlord will not get less than the automatic formula increase unless a tenant has actually demonstrated his inability to pay. Even then, the regulation still provided that the landlord would get a reasonable return. In New York, a tenant's individual circumstances are irrelevant and appellants are deprived of a reasonable return. All tenants of rent-controlled properties -- rich and poor alike -- are entitled to an artificial limit on increases in their rents, even when such a limitation deprives a landlord of the opportunity to earn a reasonable return on his or her property.

Regardless of the ultimate outcome of the *Pennell* case, if there is one legal proposition that ought not to be the subject of controversy, it is that these appellants who have, for all practical purposes, had their property put to a public use have a right to a reasonable return on their property. When government interference with that right is so severe as to amount to confiscation, it is an unconstitutional taking of property. Thus, the Supreme Court of New Jersey wrote: "It is axiomatic that a rent control ordinance must permit an efficient landlord to realize a 'just and reasonable return' on his property." *Helmsley v. Borough of Fort Lee*, 78 N.J. 200, 208, 394 A.2d 65, 70 (1978); *see also Marshal House, Inc. v. Rent Control Board of Brookline*, 358 Mass. 686, 700, 266 N.E.2d 876, 888 (1971) ("a rent control law should . . . insure to

landlords 'a fair return on the value of the property'"); *Fisher v. City of Berkeley*, 37 Cal.3d 644, 209 Cal. Rptr. 682, 693 P.2d 261 (1984) (landlords are entitled to fair and reasonable returns on their property) *aff'd on other grounds*, 475 U.S. 260 (1986).

These decisions merely apply the constitutional "takings" principles, articulated by this Court, to the residential property context. These principles are succinctly stated in *F.C.C. v. Florida Power Corp.*, 107 S. Ct. 1107, 1113 (1987):

> It is of course settled beyond dispute that the regulation of rates chargeable from the employment of private property devoted to public uses is constitutionally permissible. *See Munn v. Illinois*, 94 U.S. [4 Otto] 113, 133–134, 24 L.Ed. 77 (1877); *Permian Basin Area Rate Cases*, 390 U.S. 747, 768–769, 88 S.Ct. 1344, 1360–1361, 20 L.Ed.2d 312 (1968). Such regulation of maximum rates of prices may, consistently with the Constitution, limit stringently the return recovered on investment, for investors' interests provide only one of the variables in the constitutional calculus of reasonableness. *Id.*, at 769, 88 S.Ct., at 1361. So long as the rates set are not confiscatory, the Fifth Amendment does not bar their imposition. *St. Joseph Stock Yards Co. v. United States*, 298 U.S. 38, 53, 56 S.Ct. 720, 726, 80 L.Ed.2d 1033 (1936); *see Permian Basin, supra*, 390 U.S., at 770, 88 S.Ct., at 1361.

Here, the rent control scheme has gone too far. New York has stepped over the line between stringently limited returns and confiscation.

In 1962, when the New York Court of Appeals upheld as facially constitutional the rent control system to which appellants are subjected, it also stated that "the Constitution . . . mandates that a landlord earn reasonable return. . . ." *I.L.F.Y. Company v. City Rent Administration*, 11 N.Y.2d 480,

492, 230 N.Y.S.2d 986, 994–995, 184 N.E.2d 575, 581 (1962). The rent control scheme then provided that landlords should receive a 6% return on value plus 2% for depreciation of the value of the building, just as the current statute provides for an 8–1/2% return, but the landlords did not try to demonstrate in *I.L.F.Y.* that their returns were below the 6% level. The court went on to say in a companion case decided the same day that confiscation under rent control would be established with a "sufficient recital" and "showing" "that the appellant landlords are limited to an unreasonably low return on their investments. . . ." *Bucho Holding Co. v. State Housing Rent Commissioner*, 11 N.Y.2d 469, 474, 230 N.Y.S.2d 977, 980, 184 N.E.2d 569, 571 (1962).

In this case, appellants have done exactly what the New York cases dictated: we asked appellee DHCR to interpret and apply the rent control law in a non–confiscatory manner; it refused to do so -- limiting appellants to 7–1/2% annual rent increases that, as the record unequivocally shows, left appellants with virtually no return on the capital value of their property.

As we demonstrated in the courts below, if rates of return such as 1%, 2% or 3%, as allowed appellants by the DHCR's challenged orders, are not unreasonably low, then they can never be so. This is so whether the rates of return allowed appellants are compared with the New York statutory rate of 8–1/2%, or whether they are merely compared with the rates of return generally available in the marketplace today. In the District of Columbia, under the Rental Housing Act of 1985, a landlord is entitled to obtain rent increases that will immediately provide for a 12% return on the equity in the property which is defined as the assessed value of the property minus the mortgage balance.

In New York, the rent control system is a convenient and politically expedient method to force landlords to provide tenants with low cost housing. As to these appellants, however, the application of this system, by the imposition of an arbitrary 7-1/2% cap on annual rent increases, violates their rights under the Fourteenth Amendment.

* * *

The pernicious effect of the decisions below extends, however, beyond the heavy financial impact on appellants, as shown by two recent decisions by lower federal courts.

In *Hall v. City of Santa Barbara,* 797 F.2d 1493 (9th Cir. 1986), the City of Santa Barbara had granted to trailer park tenants a "transferable" "possessory interest" in their trailer park leases at below market rental rates. Because the trailer park lots had been effectively deeded by the Santa Barbara ordinance to the tenants, the court found a taking of the landlord's property by permanent physical occupation.

Speaking to the rationality of the ordinance, the court recognized the growing consensus that '"rent control causes a reduction in the quality of the existing rental housing stock and discourages investment in new rental property,' actually exacerbating the problems it was intended to ameliorate." *Id.* at 1503, n.26.

Thus, if the landlords proved their allegations at trial, the court stated the ordinance "will do little more than give a windfall to current mobile park tenants at the expense of current mobile park owners" and may also "increase the market price of mobile homes subject to the ordinance" which "may well hinder rather than assist lower-income families

seeking access to rental units in mobile park homes." *Id.* at 1503.

The rationality of rent control in the constitutional takings context, the court wrote, "may have to be reassessed in light of this growing body of thought on this subject." *Id.* at 1503 n.26. The court cited for this proposition *Matsushita Elec. Indust. Co. v. Zenith Radio Corp.*, 475 U.S. 574 (1986), noting that this Court has "reexamined the inference to be drawn in predatory pricing cases in light of recent law and economics commentary on the subject." *Hall, at 1503 n. 26.*

In *Chicago Board of Realtors, Inc. v. The City of Chicago*, 819 F.2d 732 (7th Cir. 1987), a Chicago ordinance was at issue which gave tenants many new rights in the landlord/tenant relationship. For example, under the Chicago ordinance, tenants were given the right to withhold rent when a landlord violates a term of the lease; tenants were also given the right to make minor repairs and subtract their reasonable cost from rent payments. The ordinance also forbade a landlord from charging a tenant more than $10 a month for late payment of rent.

Judges Posner and Easterbrook, concurring, in an opinion which represented the views of the majority of the court, found that one of the landlord's "most promising challenges" to the new regulation was a claim that an important part of the landlord's property was being taken without compensation. Judges Posner and Easterbrook found that "the politics of the ordinance are plain enough" because the "beneficiaries of the ordinance are the most influential group in the City's population." *Id.* at 742. Further, these judges found the statute to be of doubtful merit: "The market for rental housing behaves as economic theory predicts: if price is artificially depressed, or the costs of landlords artificially in-

creased, supply falls and many tenants, usually the poor and newer tenants, are hurt." *Id.* (citations omitted). As the Ninth Circuit recognized in *Hall*, the Seventh Circuit recognized in *City of Chicago:* "'a ceiling on rents reduces the quantity and quality of housing available.'" *Id.* (citations omitted).

If the landlords in *City of Chicago* arguably suffered an unconstitutional taking based on the additional cost to them of the statute's newly created rights for tenants, then surely the appellants in this case are entitled to relief. Unlike the landlords in *City of Chicago*, who could raise rents in response to these increased costs, appellants' rents are controlled by law and the law limits appellants to minuscule returns -- a few dollars over break even -- which appellants demonstrated in the courts below.

The vitality of the constitutional protection for property rights, ignored by the courts below, was given full expression by this Court in *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles,* 107 S. Ct. 2387 (1987). The court held in *Glendale* that a regulation which constitutes a "taking" of property for only a temporary period is nonetheless a taking for which the state must pay compensation. If the state deprives a person of the use and enjoyment of his or her property for however long, then it must pay compensation. Surely, in this case appellants have suffered a taking.

CONCLUSION

This Court should note probable jurisdiction or, in the alternative, it should grant certiorari to review the decisions below. Alternatively, appellants respectfully request that this jurisdictional statement be treated as a petition for writ of certiorari, and granted. 28 U.S.C. § 2103.

Dated: New York, New York
January 11, 1988

Respectfully submitted,

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APPENDIX A

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In the matter of the Application of :
NORMAN PECK, :
Petitioner, :

for a Judgment pursuant to Article 78
of the Civil Practice Law & Rules : Index 16717/85
Index 16718/85
-against- : Index 16719/85

VICTOR BONOMO, CHARLES HERMAN,:
JOHN D. GREEN, LAZAR and LEA
GOTTFRIED, BERNARD GOLDEN :
RAY BERMAN, HOWARD SHAVEL,
JAMES L. MARCUS, HYMAN SUTTON :
MICHAEL FREEDMAN, LESTER LOCKWOOD,
PAUL WEISSMAN and SONIA REESE, :

Intervenor-Respondents. :

- x

60 Centre Street
New York, N. Y.

March 21, 1986

B e f o r e : HON. IRA GAMMERMAN, J. S. C.

A p p e a r a n c e s:

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9 Murray Street
New York, N. Y. 10007
by: MITCHEL I. HERSTIC

Also Present:

ANTHONY McDONALD
Assistant Corporation Counsel
City of New York

Dorn M. Alexander,
Official Court Reporter.

MR. McDONALD: Anthony McDonald, assistant corporation counsel, City of New York. We are not a party to any of these proceedings, but there is a motion pending to enjoin the City as a necessary party in three of the proceedings with petitioners Greene, Peck and Sharp.

THE COURT: Since we are dealing with the State Division of Housing & Community Renewal, why enjoin the City?

MR. BLUMSTEIN: We have made that motion in response to the objection of the D.H.C.R. We couldn't proceed without the City as a necessary party.

THE COURT: If I conclude they are not a necessary party, I take it that eliminates the need for making that motion?

MR. BLUMSTEIN: Correct.

THE COURT: So motions are denied, those motions are denied. Let's determine which ones, I have to notice which motions they were. Number 20 of January 29, Greene vs. Mirabel; 28 of January 29, Greene vs. Mirabel and number 15 of January, Peck vs. Mirabel. I will get those files out and dispose of those.

THE COURT: The issues raised by the remaining applications are the same, are they not?

MR. BLUMSTEIN: They are, Your Honor.

THE COURT: An attack on the constitutionality of the statute?

MR. BLUMSTEIN: As applied, yes, sir.

THE COURT: Why is this attack any different from all the other different attacks on rent control?

MR. BLUMSTEIN: Your Honor, we have done something which I think is little bit different than from what other cases I've seen. In the other cases landlords come in and in general terms, without any specific showing of how a particular statute applies, have said rent control is no good, or rent stabilization is no good, the return is X and that is unfair, that is unreasonable, et cetera, without any showing of what a fair return was or should be, no specific facts were shown.

In our case we've a statute, we've got the State saying eight and a half percent is the return on capital value which we think landlords should get. If they can't get it, they are entitled to apply for a hardship. That is a here and now statute, not something to be obtained in the year 2000 or utopia. We have been able to demonstrate that the application of that statute with the seven and a half per cent cap produces a rather extraordinary result.

THE COURT: You mean seven and a half per cent cap?

MR. BLUMSTEIN: On the annual increase. Don't forget there is no dispute this is hardship. That's the D.H.C.R.

THE COURT: That's why they gave you the increase.

MR. BLUMSTEIN: And in dollar terms they were the increase that we thought we were entitled to, but they spread them out over time, and that makes a big difference, really, when you come down to it. Maybe the whole issue in this case has to do with timing, but when you talk about dollars timing is very important. A dollar today is not what it is going to be tomorrow or five years from now. The whole formula, the whole equation changes, the dollar changes because Proceedings of inflation, expenses go up --

THE COURT: Because of inflation.

MR. BLUMSTEIN: The access value goes up, and when they talk about taking this money and spreading it out over time, they are not giving us eight and a half per cent. I think we demonstrated as best we could, we had to make some projections, but in one of these buildings, I think it is the West End building, 88 & 89, one point one per cent, in some of the other buildings, two point six, sometimes a lower per cent, sometimes a little higher but in that range. This is compared to the statutory return of eight and a half per cent. It is that contrast, that differential which distinguishes this case from all of the other cases, why this is not just a generalized challenge to a legislative scheme. This happens after you apply the hardship provision. We are not talking about whether the Legislature has to pass a statute which is fine tuned no landlord suffers any hardship. That is why you have a hardship provision. We went and we made the application. There is no dispute as to the fact, and we wind up with, for all practical purposes, an overturn. My friend says, well, don't forget those apartments when you show you are losing money, we brought you up to the break even point. That is telling me the apartments have no value. That is the way the system works as it is applied to us.

THE COURT: I have heard arguments of landlords on rent control that the imposition of rent control causes them to lose money, the abandonment of property. This is an argument that has been going on since rent control was established. That argument, I don't see anything unique in your argument. That is what I find puzzling.
Proceedings

MR. ROSENBERG: One difference is that in every

other case, and I guess the closest case could be Bucho, holding where they held for hardship, and the Court of Appeals held in 1970 four per cent might not be unconstitutional, but we see the return that you are getting is six and a half, that we see them getting a six and a half per cent return, we say that is constitutional, that's what we see. We have demonstrated our return as being one and two per cent. We submit that at a certain point a police power is only constitutional so long as one receives or has the ability to receive a reasonable return, whatever number that be. We submit our one per cent demonstration in the papers and our two per cent is below any possible reasonable return.

THE COURT: Let me hear from you.

MR. GROSSMAN: If it please the Court, there have been several points which have been made which we'd like to respond to. First of all, it is not true the previous attacks upon rent control in New York City have not been specific. To the contrary, they have been very specific. There was an attack which was not specific, one recent one was Beene was the defendant, in which the court threw out on that basis, but most of the other cases have been specific attacks by specific landlords against the specific statute or one substantially similar or identical to it in which the landlords claimed they were not making sufficient return. And in all of those cases the courts have held the rent control statute was constitutional.

As far as the point of application to these petitioners is concerned, there is no allegation in these petitions singled out. They are also saying that this is not an attack on a Proceedings legislative scheme. It certainly is. It is an attack on a legislative scheme which provides, in keeping with the Legislature's interest in preventing precipitous rent hikes, for

gradual rent increases toward an eight and a half per cent return. In the cases that have come to this court and have been appealed, the courts uniformly have held that the legislative system for regulating rent increases was constitutional.

We should also keep in mind, Your Honor, that what we are dealing with here are calculations based upon individual apartments rather than entire buildings. The petitioners here are the shareholders of as yet un-sold apartments who are insisting that they are entitled to eight and a half per cent return on each apartment that they have not sold.

THE COURT: You think they should be treated differently than someone who owns an entire building?

MR. GROSSMAN: It is not my position that --

THE COURT: What difference does it make if they are shareholders of a particular apartment or owners of a building?

MR. GROSSMAN: The difference that it makes, Your Honor, is that the calculations which were done in this proceeding were done to afford these petitioners seven and a half per cent increase toward an eight and a half per cent return on every apartment not yet sold, rather than seven and a half per cent increase in all rent control apartments in a building to an eight and a half per cent return on a building.

THE COURT: I see. I understand.

MR. GROSSMAN: The courts have held that the returns which other landlords have claimed was unconstitutionally confiscatory have not been constitutionally confiscatory. This is a valid exercise of police powers to strike a balance between the desire on the part of the landlords for

greater return on their investment and the need to protect the tenants from precipitous rent hikes.

THE COURT: And you, sir?

MR. HERSTIC: I concur with the arguments which Mr. Grossman advances. I will not repeat anything. I'd like to state this definitely is a challenge of the constitutionality of the rent control.

THE COURT: There is no question, nobody is denying that.

MR. HERSTIC: There is no difference between this case and the other case.

THE COURT: I find it very difficult to distinguish this case from Bucho.

MR. GROSSMAN: Let me add one thing.

THE COURT: Presumably the agency took into consideration the economic considerations you discussed in your papers?

MR. GROSSMAN: The accounting file in each of the three buildings, Your Honor, is quite exhaustive. There was a full analysis of the returns and expenses of every apartment down to the cent. And what the respondent did in these cases was simply follow the legislative will as enacted by the City Council in the New York City Rent Law.

Also, insofar as the argument as it applies to them that the statute is unconstitutional, the cases have held that a statute of general application of rent regulation statute could not be so fine tuned as to insure that each and every landlord would get --

THE COURT: The argument being made is as applied is constitutional.

MR. GROSSMAN: But the only time that type of argument of unconstitutional application can succeed is if the claim being made, which it is not being made in this case, that a particular person or class is unfairly singled out in the application of the statute to him or to them.

MR. BLUMSTEIN: That is protection, that is no-due process.

THE COURT: No, I don't think we have to reach that issue at all.

MR. BLUMSTEIN: Can I try? I am going to this case in the Court of Appeals. The Court after finding that the rights were constitutional goes on to say, these are not cases where we can say that the returns are not generally fair and equitable. To me that is a clear indication --

THE COURT: There has been a determination by the agency that the returns are fair and equitable.

MR. BLUMSTEIN: But that doesn't preclude --

THE COURT: I agree, but I am not prepared --

MR. GROSSMAN: The finding by the Legislature that these returns are the proper returns to strike the balance between the need for protection of tenants and of landlords for getting a greater return.

MR. BLUMSTEIN: Like the reverse, the legislative finding, insofar as it feels a rate of return is eight and a half per cent, not one and two per cent.

MR. GROSSMAN: The very same statute also provides for the limitation on rent increases toward that eight and a half per cent return.

MR. BLUMSTEIN: I have heard of the Legislature doing unusual things —

THE COURT: I have indicated I really don't see that case is so different from Bucho. I will follow what is my view as the holding of Bucho. I will deny the application and dismiss the petition.

MR. HERSTIC: Thank you.

MR. BLUMSTEIN: Thank you, Your Honor.

THE COURT: Those petitions are marked withdrawn.

• • •

CERTIFIED TO BE A TRUE AND CORRECT TRANSCRIPT OF MINUTES TAKEN BY ME.

_____ C. R.

APPENDIX B

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on April 7, 1987

Present-Hon. Theodore R. Kupferman, Justice Presiding
Joseph P. Sullivan, John Carro
Betty Weinberg Ellerin and George Bundy Smith, Justices.

In the Matter of the Application of
JEROME GREENE, NORMAN PECK, and PETER SHARP
Petitioners-Appellants,

against

MANUEL MIRABEL, Deputy Commissioner, New York State Division of housing and Community Renewal,
Respondent-Respondent.

New York County Clerk's Index No. 16717/85

In the Matter of the Application of 29671-73
JEROME GREENE, NORMAN PECK, and PETER SHARP
Petitioners-Appellants,

against

MANUEL MIRABEL, Deputy Commissioner, New York State Division of housing and Community Renewal,
Respondent-Respondent.

New York County Clerk's Index No. 16718/85

In the Matter of the Application of NORMAN PECK,
Petitioner-Appellant,

against

MANUEL MIRABEL, Deputy Commissioner, New York State Division of housing and Community Renewal,
Respondent-Respondent.
VICTOR BONOMO, et al.,
Intervenors-Respondents.

New York County Clerk's Index No. 16719/85

Appeals having been taken to this Court by the above-named appellants from two orders of the Supreme Court, New York County (Ira Gammerman, J.), both entered on March 28, 1986, and from an order of said court, entered on April 10, 1986,

And said appeals having been argued by Allan Blumtein of counsel for appellants, and by Jan C. Rose of counsel for respondent-respondent; and due deliberation having been had thereon,

It is unanimously ordered that the three orders so appealed from be and the same hereby are affirmed, without costs and without disbursements.

ENTER: HAROLD J. REYNOLDS
Clerk.

APPENDIX C

State of New York,
Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the ninth day of July A.D. 1987

Present, *HON. SOL WACHTLER, Chief Judge, presiding.*

Mo. No. 766 SSD 52

In the Matter of Jerome Greene, et al.,

Appellants,

vs.

Manuel Mirabel, Deputy Commissioner, & c.,

Respondent.

(and two additional proceedings.)

The appellants having filed notice of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal be and the same hereby is dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.

Donald M. Sheraw
Clerk of the Court

APPENDIX D

State of New York,
Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the thirteenth day of October A.D. 1987

Present, *HON. SOL WACHTLER, Chief Judge, presiding.*

1-10 Mo. No. 977
In the Matter of Jerome Greene, et al.,

Appellants,

vs.

Manuel Mirabel, Deputy Commissioner, & c.,

Respondent.

(and two additional proceedings.)

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellants herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

Donald M. Sheraw
Clerk of the Court

APPENDIX E

Administrative Orders of The Office of Rent and Housing Maintenance of The City of New York, Dated September 8, 1983

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40645– 40659 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: 444 East 52nd Street (Number And Street) 6A (Apartment No.) New York, N.Y. 10022 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Jerome Greene c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue, Suite 1601 New York, N.Y. 10022	Lillian Berger 444 East 52nd Street Apt. 6A New York, N.Y. 10022

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $609.22 to $654.91	per month, effective April 26, 1983
Further increased to $704.03	per month, effective April 26, 1984
Further increased to $756.83	per month, effective April 26, 1985
Further increased to $790.86	per month, effective April 26, 1986

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustmentss ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7-1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7-1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: May 18 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40645– 40659 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: 444 East 52nd Street (Number And Street) 6B (Apartment No.) New York, N.Y. 10022 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Jerome Greene c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Dorothy Kilday 444 East 52nd Street Apt. 6B New York, N.Y. 10022

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $228.07 to $245.18	per month, effective April 26, 1983
Further increased to $263.57	per month, effective April 26, 1984
Further increased to $279.25	per month, effective April 26, 1985

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustmentss for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7–1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7–1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: May 18 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK-HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40645- 40659 Docket No.

ORDER DENYING APPLICATION OR TERMINATING PROCEEDING

Address Of Subject Building: 444 East 52nd Street (Number And Street) 4C (Apartment No.) New York, N.Y. 10022 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Jerome Greene c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Marcel Fernandez Diaz 444 East 52nd Street Apt. 4C New York, N.Y. 10022

After consideration of all the evidence in the record, the District Rent Director (only boxes marked "X" are applicable).

1. /X/ finds that facts in your case do not warrant the relief requested under Section 33.5 of the Regultions.Therefore, it is ordered that said application be and it hereby is denied without prejudice to the filing of another application if other facts can be shown which warrant relief under the regulations.

2. /X/ (Other) No adjustments is warranted for the subject unit.

Issued: May 18 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40645– 40659 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: 444 East 52nd Street (Number And Street) 7C (Apartment No.) New York, N.Y. 10022 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Jerome Greene c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Peter Glenn 444 East 52nd Street Apt. 7C New York, N.Y. 10022

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $667.69 to $691.27 per month, effective April 26, 1983

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustmentss ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7-1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7-1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: May 18 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40645– 40659 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: 444 East 52nd Street (Number And Street) 3D (Apartment No.) New York, N.Y. 10022 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Jerome Greene c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Solomon Korkes 444 East 52nd Street Apt. 3D New York, N.Y. 10022

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $375.13 to $403.25	per month, effective April 26, 1983
Further increased to $433.50	per month, effective April 26, 1984
Further increased to $458.82	per month, effective April 26, 1985

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustmentss ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7–1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7–1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: May 18 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40645– 40659 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: 444 East 52nd Street (Number And Street) 7D (Apartment No.) New York, N.Y. 10022 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Jerome Greene c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Gloria Gellman 444 East 52nd Street Apt. 7D New York, N.Y. 10022

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $393.43 to $422.94	per month, effective April 26, 1983
Further increased to $454.66	per month, effective April 26, 1984
Further increased to $488.76	per month, effective April 26, 1985
Further increased to $496.16	per month, effective April 26, 1986

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustmentss ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7–1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7–1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: May 18 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40645– 40659 Docket No.

ORDER DENYING APPLICATION OR TERMINATING PROCEEDING

Address Of Subject Building: 444 East 52nd Street (Number And Street) 2E (Apartment No.) New York, N.Y. 10022 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Jerome Greene c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Gudrun Galloway 444 East 52nd Street Apt. 2E New York, N.Y. 10022

After consideration of all the evidence in the record, the District Rent Director (only boxes marked "X" are applicable).

1. /X/ finds that facts in your case do not warrant the relief requested under Section 33.5 of the Regulations. Therefore, it is ordered that said application be and it hereby is denied without prejudice to the filing of another application if other facts can be shown which warrant relief under the regulations.

2. /X/ (Other) No adjustments is warranted for the subject unit.

Issued: May 18 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40645– 40659 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: 444 East 52nd Street (Number And Street) 4E (Apartment No.) New York, N.Y. 10022 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Jerome Greene c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Luther Perry 444 East 52nd Street Apt. 4E New York, N.Y. 10022

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $271.42 to $282.25 per month, effective April 26, 1983

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustmentss ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7–1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7–1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: May 18 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK-HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40645- 40659 Docket No.

ORDER DENYING APPLICATION OR TERMINATING PROCEEDING

Address Of Subject Building: 444 East 52nd Street (Number And Street) 8E (Apartment No.) New York, N.Y. 10022 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Jerome Greene c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Grover Whalen 444 East 52nd Street Apt. 8E New York, N.Y. 10022

After consideration of all the evidence in the record, the District Rent Director (only boxes marked "X" are applicable).

1. /X/ finds that facts in your case do not warrant the relief requested under Section 33.5 of the Regulations. Therefore, it is ordered that said application be and it hereby is denied without prejudice to the filing of another application if other facts can be shown which warrant relief under the regulations.

2. /X/ (Other) No adjustments is warranted for the subject unit.

Issued: May 18 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40645– 40659 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: 444 East 52nd Street (Number And Street) 1F (Apartment No.) New York, N.Y. 10022 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Jerome Greene c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Devan Brashich 444 East 52nd Street Apt. 1F New York, N.Y. 10022

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $516.62 to $555.37	per month, effective April 26, 1983
Further increased to $597.02	per month, effective April 26, 1984
Further increased to $637.29	per month, effective April 26, 1985

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustmentss ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7–1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7–1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: May 18 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40645– 40659 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: 444 East 52nd Street (Number And Street) 3F (Apartment No.) New York, N.Y. 10022 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Jerome Greene c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Alexander Gutman 444 East 52nd Street Apt. 3F New York, N.Y. 10022

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $416.59 to $525.93	per month, effective April 26, 1983
Further increased to $565.37	per month, effective April 26, 1984
Further increased to $607.77	per month, effective April 26, 1985
Further increased to $649.74	per month, effective April 26, 1986

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7–1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7–1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: May 18 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40645– 40659 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: 444 East 52nd Street (Number And Street) 4F (Apartment No.) New York, N.Y. 10022 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Jerome Greene c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Angela Norwood 444 East 52nd Street Apt. 4F New York, N.Y. 10022

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $680.72 to $731.77 per month, effective April 26, 1983
Further increased to $770.16 per month, effective April 26, 1984

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7-1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7-1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: May 18 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40645– 40659 Docket No.

ORDER DENYING APPLICATION OR TERMINATING PROCEEDING

Address Of Subject Building: (Number And Street) 444 East 52nd Street (Apartment No.) 5F (Borough and Zip Code) New York, N.Y. 10022

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Jerome Greene c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	William Symmers 444 East 52nd Street Apt. 5F New York, N.Y. 10022

After consideration of all the evidence in the record, the District Rent Director (only boxes marked "X" are applicable).

1. /X/ finds that facts in your case do not warrant the relief requested under Section 33.5 of the Regulations.Therefore, it is ordered that said application be and it hereby is denied without prejudice to the filing of another application if other facts can be shown which warrant relief under the regula vbctions.

2. /X/ (Other) No adjustment is warranted for the subject unit.

Issued: May 18 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40645– 40659 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: 444 East 52nd Street (Number And Street) 6F (Apartment No.) New York, N.Y. 10022 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Jerome Greene c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	John Miller 444 East 52nd Street Apt. 6F New York, N.Y. 10022

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $692.04 to $693.30 per month, effective April 26, 1983

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7-1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7-1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: May 18 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40645– 40659 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: 444 East 52nd Street (Number And Street) PHN (Apartment No.) New York, N.Y. 10022 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Jerome Greene c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	James Henderson 444 East 52nd Street Apt. PHN New York, N.Y. 10022

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $1,089.53–$1,618.34	per month,	effective April 26, 1983
Further increased to $1,739.72	per month,	effective April 26, 1984
Further increased to $1,870.20	per month,	effective April 26, 1985
Further increased to $1,894.40	per month,	effective April 26, 1986

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7–1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7–1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: May 18 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40660– 40678 Docket No.

ORDER DENYING APPLICATION OR TERMINATING PROCEEDING

Address Of Subject Building: 44 Gramercy Park North (Number And Street) 4A (Apartment No.) New York, N.Y. 10010 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Norman Peck, c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Andrew J. Kirch 44 Gramercy Park North Apt. 4A New York, N.Y. 10010

After consideration of all the evidence in the record, the District Rent Director (only boxes marked "X" are applicable).

1. /X/ finds that facts in your case do not warrant the relief requested under Section 33.5 of the Regulations.Therefore, it is ordered that said application be and it hereby is denied without prejudice to the filing of another application if other facts can be shown which warrant relief under the regulations.

Issued: September 8 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40660– 40678 Docket No.

ORDER DENYING APPLICATION OR TERMINATING PROCEEDING

Address Of Subject Building: 44 Gramercy Park North (Number And Street) 5A (Apartment No.) New York, N.Y. 10010 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Norman Peck, c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Morton S. James 44 Gramercy Park North Apt. 5A New York, N.Y. 10010

After consideration of all the evidence in the record, the District Rent Director (only boxes marked "X" are applicable).

1. /X/ finds that facts in your case do not warrant the relief requested under Section 33.5 of the Regulations. Therefore, it is ordered that said application be and it hereby is denied without prejudice to the filing of another application if other facts can be shown which warrant relief under the regulations.

Issued: September 8 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40660– 40678 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: 44 Gramercy Park North (Number And Street) 6A (Apartment No.) New York, N.Y. 10010 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Norman Peck, c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Jon M. Krol 44 Gramercy Park North Apt.6A New York, N.Y. 10010

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $507.92 to $552.38	per month, effective August 3, 1983
Increased from $693.81	per month, effective August 3, 1984
Increased from $638.35	per month, effective August 3, 1985
Increased from $680.42	per month, effective August 3, 1986

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7-1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7-1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: September 8 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40660– 40678 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: (Number And Street) 44 Gramercy Park North (Apartment No.) 9A (Borough and Zip Code) New York, N.Y. 10010

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Norman Peck, c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Elaine Wagner 44 Gramercy Park North Apt. 9A New York, N.Y. 10010

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $522.47 to $561.66	per month, effective August 3, 1983
Increased from $603.78	per month, effective August 3, 1984
Increased from $641.64	per month, effective August 3, 1985

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7–1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7–1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: September 8 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40660– 40678 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: (Number And Street) 44 Gramercy Park North (Apartment No.) 11A (Borough and Zip Code) New York, N.Y. 10010

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Norman Peck, c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Harry S. Guthait 44 Gramercy Park North Apt. 11A New York, N.Y. 10010

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $532.17 to $572.08	per month, effective August 3, 1983
Increased from $614.99	per month, effective August 3, 1984
Increased from $632.64	per month, effective August 3, 1985

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7-1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7-1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: September 8 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40660– 40678 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: (Number And Street) 44Gramercy Park North (Apartment No.) 16A (Borough and Zip Code) New York, N.Y. 10010

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Norman Peck, c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Gustav Rosenberg 44 Gramercy Park North Apt. 16A New York, N.Y. 10010

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $509.65 to $547.87 per month, effective August 26, 1983
Further increased to $561.54 per month, effective August 26, 1984

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7–1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7–1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: September 8 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40660– 40678 Docket No.

ORDER DENYING APPLICATION OR TERMINATING PROCEEDING

Address Of Subject Building: 44 Gramercy Park North (Number And Street) 14B (Apartment No.) New York, N.Y. 10010 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Norman Peck, c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Sue Greene 44 Gramercy Park North Apt. 14B New York, N.Y. 10010

After consideration of all the evidence in the record, the District Rent Director (only boxes marked "X" are applicable).

1. /X/ finds that facts in your case do not warrant the relief requested under Section 33.5 of the Regulations.Therefore, it is ordered that said application be and it hereby is denied without prejudice to the filing of another application if other facts can be shown which warrant relief under the regulations.

Issued: September 8 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40660– 40678 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: (Number And Street) (Apartment No.) (Borough and Zip Code) 44 Gramercy Park North 2C New York, N.Y. 10010

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Norman Peck, c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Martain Weil 44 Gramercy Park North Apt. 2C New York, N.Y. 10010

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $576.35 to $619.58 per month, effective August 26, 1983
Further increased to $628.71 per month, effective August 26, 1984

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7–1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7–1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: September 8 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40660– 40678 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: 44 Gramercy Park North (Number And Street) 10C (Apartment No.) New York, N.Y. 10010 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Norman Peck, c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Hyman Rosenstein 44 Gramercy Park North Apt. 10C New York, N.Y. 10010

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $597.27 to $642.07 per month, effective August 3, 1983
Further increased to $661.03 per month, effective August 3, 1984

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7–1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7–1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: September 8 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40660– 40678 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: 44 Gramercy Park North (Number And Street) 12C (Apartment No.) New York, N.Y. 10010 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Norman Peck, c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Ruth Greenberg 44 Gramercy Park North Apt. 12C New York, N.Y. 10010

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $475.24 to $509.82 per month, effective August 3, 1983

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7–1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7–1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: September 8 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40660– 40678 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: (Number And Street) 44 Gramercy Park North (Apartment No.) 9D (Borough and Zip Code) New York, N.Y. 10010

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Norman Peck, c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Milton Birnbaum 44 Gramercy Park North Apt. 9D New York, N.Y. 10010

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $424.81 to $438.72 per month, effective August 3, 1983

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7-1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7-1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: September 8 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40660– 40678 Docket No.

ORDER DENYING APPLICATION OR TERMINATING PROCEEDING

Address Of Subject Building: 44 Gramercy Park North (Number And Street) 2E (Apartment No.) New York, N.Y. 10010 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Norman Peck, c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Walter Mitchell 44 Gramercy Park North Apt. 2E New York, N.Y. 10010

After consideration of all the evidence in the record, the District Rent Director (only boxes marked "X" are applicable).

1. /X/ finds that facts in your case do not warrant the relief requested under Section 33.5 of the Regulations. Therefore, it is ordered that said application be and it hereby is denied without prejudice to the filing of another application if other facts can be shown which warrant relief under the regulations.

Issued: September 8 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40660– 40678 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: 44 Gramercy Park North (Number And Street) 10E (Apartment No.) New York, N.Y. 10010 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Norman Peck, c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	John F. Baier 44 Gramercy Park North 10E New York, N.Y. 10010

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $391.89 to $412.87 per month, effective August 3, 1983

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7–1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7–1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: September 8 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40660– 40678 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: 44 Gramercy Park North (Number And Street) 3F (Apartment No.) New York, N.Y. 10010 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Norman Peck, c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Doris Tabachnik 44 Gramercy Park North 3F New York, N.Y. 10010

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $362.19 to $374.10 per month, effective August 3, 1983

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7-1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7-1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: September 8 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40660– 40678 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: 44 Gramercy Park North 10F New York, N.Y. 10010
(Number And Street) (Apartment No.) (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Norman Peck, c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Peter Michelson 44 Gramercy Park North 10F New York, N.Y. 10010

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $410.53 to $419.33 per month, effective August 3, 1983

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7–1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7–1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: September 8 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK-HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40679- 40691 Docket No.

ORDER ADJUSTING MAXIMUM RENT

(Number And Street) (Apartment No.) (Borough and Zip Code)

Address Of Subject Building: 325 West End Avenue 4A New York, N.Y. 10022

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Jerome Greene c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Victor Bonomo 325 West End Avenue Apt. 4A New York, N.Y. 10023

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $782.39 to $841.07	per month, effective August 22, 1983
Further increased to $904.15	per month, effective August 22, 1984
Further increased to $949.83	per month, effective August 22, 1985

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7-1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7-1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: August 29 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40679– 40691 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: 325 West End Avenue (Number And Street) 6A (Apartment No.) New York, N.Y. 10022 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Jerome Greene c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Charles Herman 325 West End Avenue Apt. 6A New York, N.Y. 10023

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $620.09 to $761.21	per month, effective August 22, 1983
Further increased to $818.30	per month, effective August 22, 1984
Further increased to $879.67	per month, effective August 22, 1985
Further increased to $945.65	per month, effective August 22, 1986
Further increased to $977.47	per month, effective August 22, 1987

The Maximum Collectible rents indicated above do not include fuel cost adjustments. The above Rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7–1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7–1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: August 29 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40679– 40691 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: 325 West End Avenue (Number And Street) 7A (Apartment No.) New York, N.Y. 10022 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Jerome Greene c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	John D. Greene 325 West End Avenue 7A New York, N.Y. 10023

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $947.29 to $1,005,10 per month, effective August 22, 1983

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7–1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7–1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: August 29 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40679– 40691 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: 325 West End Avenue (Number And Street) 6B (Apartment No.) New York, N.Y. 10022 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Jerome Greene c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Lazar & Lea Gottfried 325 West End Avenue Apt. 6B New York, N.Y. 10023

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $501.14 to $596.89	per month, effective August 22, 1983
Further increased to $641.66	per month, effective August 22, 1984
Further increased to $689.78	per month, effective August 22, 1985
Further increased to $741.51	per month, effective August 22, 1986
Further increased to $766.39	per month, effective August 22, 1987

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7–1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7–1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: August 29 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40679– 40691 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: 325 West End Avenue (Number And Street) 4C (Apartment No.) New York, N.Y. 10022 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Jerome Greene c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Bernard Golden 325 West End Avenue Apt. 4C New York, N.Y. 10023

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $371.65 to $416.69	per month, effective August 22, 1983
Further increased to $447.94	per month, effective August 22, 1984
Further increased to $481.54	per month, effective August 22, 1985
Further increased to $517.66	per month, effective August 22, 1986
Further increased to $536.51	per month, effective August 22, 1987

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7-1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7-1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: August 29 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK-HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40679- 40691 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: 325 West End Avenue (Number And Street) 9C (Apartment No.) New York, N.Y. 10022 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Jerome Greene c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Ray Berman 325 West End Avenue Apt. 9C New York, N.Y. 10023

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $554.28 to $595.85	per month, effective August 22, 1983
Further increased to $640.54	per month, effective August 22, 1984
Further increased to $674.67	per month, effective August 22, 1985

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7-1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7-1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: August 29 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40679– 40691 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: 325 West End Avenue (Number And Street) 10C (Apartment No.) New York, N.Y. 10022 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Jerome Greene c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Howard Shavel 325 West End Avenue Apt. 10C New York, N.Y. 10023

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Increased from $524.76 to $564.12	per month, effective August 22, 1983
Further increased to $606.43	per month, effective August 22, 1984
Further increased to $651.91	per month, effective August 22, 1985
Further increased to $688.48	per month, effective August 22, 1986

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7-1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7-1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: August 29 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40679– 40691 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: (Number And Street) 325 West End Avenue (Apartment No.) 11C (Borough and Zip Code) New York, N.Y. 10022

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Jerome Greene c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	James L. Marcus 325 West End Avenue Apt. 11C New York, N.Y. 10023

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $544.42 to $585.25	per month, effective August 22, 1983
Further increased to $629.14	per month, effective August 22, 1984
Further increased to $676.33	per month, effective August 22, 1985
Further increased to $716.12	per month, effective August 22, 1986

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7–1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7–1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: August 29 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40679– 40691 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: 325 West End Avenue (Number And Street) 2D (Apartment No.) New York, N.Y. 10022 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Jerome Greene c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Hyman Sutton 325 West End Avenue Apt. 2D New York, N.Y. 10023

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $548.34 to $630.49	per month, effective August 22, 1983
Further increased to $677.78	per month, effective August 22, 1984
Further increased to $728.61	per month, effective August 22, 1985
Further increased to $783.26	per month, effective August 22, 1986
Further increased to $811.68	per month, effective August 22, 1987

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7-1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7-1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: August 29 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40679– 40691 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: 325 West End Avenue (Number And Street) 3D (Apartment No.) New York, N.Y. 10022 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Jerome Greene c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Michael Freedman 325 West End Avenue Apt. 3D New York, N.Y. 10023

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $540.41 to $641.38	per month, effective August 22, 1983
Further increased to $689.48	per month, effective August 22, 1984
Further increased to $741.19	per month, effective August 22, 1985
Further increased to $796.78	per month, effective August 22, 1986
Further increased to $825.49	per month, effective August 22, 1987

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7–1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7–1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: August 29 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40679– 40691 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: 325 West End Avenue (Number And Street) 4D (Apartment No.) New York, N.Y. 10022 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Jerome Greene c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Lester Lockwood 325 West End Avenue Apt. 4D New York, N.Y. 10023

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $659.43 to $708.89	per month, effective August 22, 1983
Further increased to $762.06	per month, effective August 22, 1984
Further increased to $819.21	per month, effective August 22, 1985
Further increased to $853.13	per month, effective August 22, 1986

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7–1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7–1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: August 29 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK–HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40679– 40691 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: 325 West End Avenue (Number And Street) 8D (Apartment No.) New York, N.Y. 10022 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Jerome Greene c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	Paul Weissman 325 West End Avenue Apt. 8D New York, N.Y. 10023

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $578.36 to $761.21	per month, effective August 22, 1983
Further increased to $818.30	per month, effective August 22, 1984
Further increased to $879.67	per month, effective August 22, 1985
Further increased to $945.65	per month, effective August 22, 1986
Further increased to $977.47	per month, effective August 22, 1987

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7–1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7–1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: August 29 1983

Sylton B. Warden
District Rent Director

THE CITY OF NEW YORK-HDA DEPARTMENT OF RENT and HOUSING MAINTENANCE OFFICE OF RENT CONTROL	OFFICE OF RENT CONTROL 2AO DISTRICT RENT OFFICE 2 LAFAYETTE STREET NEW YORK, N.Y. 10007	40679- 40691 Docket No.

ORDER ADJUSTING MAXIMUM RENT

Address Of Subject Building: 325 West End Avenue (Number And Street) 12D (Apartment No.) New York, N.Y. 10022 (Borough and Zip Code)

MAILING ADDRESS OF LANDLORD:	MAILING ADDRESS OF TENANT:
Jerome Greene c/o Church Mgmt., A Division of Peter Sharp & Co., Inc., Agents 555 Madison Avenue Suite 1601 New York, N.Y. 10022	325 West End Avenue 12D New York, N.Y. 10023

After consideration of the evidence in the record, and upon grounds stated in Section 33.5 of the Regulations, the District Rent Director finds that the maximum rent for the above described housing accommodation should be adjusted to yield an 8.5 percent return of the valuation of the property.

Therefore, it is ordered that the maximum rent for the above described housing accommodation be, and hereby is increased effective on the date(s) set forth below:

Increased from $842.85 to $906.06	per month, effective August 22, 1983
Further increased to $974.01	per month, effective August 22, 1984
Further increased to $1.047.06	per month, effective August 22, 1985
Further increased to $1,060.36	per month, effective August 22, 1986

The Maximum Collectible Rents indicated above do not include fuel cost adjustments. The above rents also include any adjustments for services and equipment ordered prior to the issuance of this order.

Section 26 of the Regulations provides that rent adjustments ordered pursuant to Section 33.5, together with those received under the Maximum Base Rent Program, may not exceed 7-1/2 percent in any calendar year. The maximum rents being ordered above, under Section 33.5, consider such limitation. Accordingly, on the effective date(s) prescribed, the tenant is required to pay the amount(s) indicated or such collectible rent(s), if any, that may have been ordered under the Maximum Base Rent Program, whichever is greater. However, Section 33d(2) of the Regulations provide that the 7-1/2% limitation set forth in Section 26 may be waived by the Administrator where a greater increase is necessary to make the earned income of the property equal to its operating expenses.

Issued: August 29 1983

Sylton B. Warden
District Rent Director

APPENDIX F

The Three Orders and Opinions of Manuel Mirabel, Deputy Commissioner of the New York State Division of Housing and Community Renewal, Dated May 14, 1985

STATE OF NEW YORK DIVISION OF HOUSING AND COMMUNITY RENEWAL OFFICE OF RENT ADMINISTRATION
17 John Street
New York, New York 10038

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF	:J.R. No. 213
	Administrative Appeal
NORMAN PECK PETER SHARP JEROME GREENE	:Docket Nos. CPLAO 897/911
	:D.R.O. Docket Nos.
Petitioner	: 2AO 40645/59

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ORDER AND OPINION GRANTING IN PART ADMINISTRATIVE APPEAL AFTER REOPENING PROCEEDING PURSUANT TO JUDGMENT OF COURT AND RENT ADJUSTMENT SCHEDULE

On June 23, 1983 the above-named petitioner-landlord filed Appeals against Orders issued on May 18, 1983 by the District Rent Administrator of the Lower Manhattan District Rent Office, concerning the housing accommodations known as 444 East 52nd Street, New York, New York, Various Accommodations.

Subsequent thereto, the petitioner--landlord filed a petition in the Supreme Court pursuant to Article 78 of the

Civil Practice Law and Rules requesting that the Orders of the District Rent Administrator be modified, since the protests were deemed denied by operation of law.

On May 11, 1984 an order was signed by Mr. Justice Burton S. Sherman remitting the proceeding to the Division of Housing and Community Renewal for consideration on the merits.

On September 19, 1984 the Commissioner issued an order and opinion denying the landlord's administrative appeals.

Thereafter, the landlord filed another petition for judicial review requesting that the order of the Commissioner be annulled.

Subsequent thereto an order was entered remitting the proceedings to this Department for further consideration.

On January 29, 1985 the Commissioner issued an order reopening these proceedings for further consideration.

The landlord, the owner of unsold shares in the subject cooperatively owned building, filed an application on August 26, 1982 for increases in the maximum rents of the various accommodations, which were being occupied by tenants who had not purchased the shares allocated therefor. In the application it was requested that the 1982/83 equalized assessed valuation of the subject building, $2,029,378.00 be used as the valuation base for calculating the increases.

On May 18, 1983, the District Rent Administrator issued orders using as the valuation base the adjusted sales price of $916,295.37 which was paid upon acquisition of the property on February 21, 1966. The adjustments ordered were

governed by the limitation of no increases being greater than 7-1/2 percent per year, in accordance with the applicable provisions of the Rent Law and Regulations, 9 NYCRR Sections 2201.6 and 2202.3(d).

In his appeal, and reiterated in the Article 78 petition for judicial review, the landlord contends, in substance, that utilizing the 1966 purchase price, rather than the equalized assessed valuation, and limiting the adjustments to 7-1/2 percent per year, were arbitrary and capricious and constituted an unconstitutional taking of property without due process of law.

After a careful reconsideration of the entire evidence of record, the Commissioner is of the opinion that this administrative appeal should be granted in part.

The landlord challenges, as arbitrary and capricious, the use of a 1966 sales price as the valuation base, and contends that rent adjustments necessary for the landlord to earn a return of 8-1/2 percent on capital value should have been computed based on the equalized assessed valuation of the subject building.

The applicable provision of the Rent Law and Regulations (9 NYCRR Section 2202.8) allows a landlord to seek rent increases when the premises are not providing " . . . a return of 8-1/2 percent on capital value which (except as provided in paragraphs b and c of this section) shall be the equalized assessed value . . . ". Paragraph c provides that where there has been a bona fide sale of the property since February 1, 1961, the purchase price may be used as the valuation base. (Emphasis supplied).

The use of a sales price, rather than the equalized assessed valuation of the property, is premised on the as-

sumption that the sales price may be a more useful index of value.

Upon reconsideration of the facts in this particular proceeding, the Commissioner is of the opinion and finds that the price paid for the subject premises 16 years prior to the time the instant application was filed does not accurately reflect the real value of the subject premises; and that the 1982/83 equalized assessed value of $2,029,378.00 is the more appropriate index of value in this proceeding. Accordingly, hardship grants have been recalculated, as reflected in the attached schedule, using the 1982/83 equalized assessed value of the subject premises as the valuation base.

The Regulations (9 NYCRR Section 2202.2) further provide, in pertinent part, that where a hardship grant is based upon the assessed value of the building, and no order is issued within four months of the date of the application, the increase shall be effective and collectible four months from the date of the filing of the application (rather than eight months when the purchase price is used). In view of the fact that the recomputed hardship adjustments are predicated on the equalized assessed value of the subject premises, rather than the purchase price, the effective date of the District Rent Administrator's orders (and subsequent anniversary dates thereof) have also been changed from May 18, 1983 to December 26, 1982 as reflected in the attached schedule.

The landlord further contends that limiting collectible increases to 7-1/2 percent per year amounts to an unconstitutional taking of property without due process of law. The legislature of the State of New York, as set forth in Section 2 of the State Enabling Act and reiterated by the City Council of the City of New York, found that preventive action was imperative to regulate and control residential rents and evictions

to avoid disruptive practices and abnormal conditions which would produce serious threats to the public health safety and general welfare. In enacting the Omnibus Housing Act of 1983 (Chapter 403 of the Laws of 1983 as amended) the State Legislature gave renewed recognition to the serious public housing emergency which continues to exist in New York.

The applicable regulations, under which the landlord herein sought relief in the first instance, limits with certain exceptions the collectibility of hardship and maximum base rent increases or both in combination to no more than 7–1/2 percent in one calendar year. Said regulations are in conformity with State and Local Laws, the constitutionality of which have been upheld by the courts as a valid exercise of the police power of the State, consistent with the need to prevent speculative, unwarranted and abnormal rent increases.

Therefore, in accordance with the provisions of the Rent and Eviction Regulations for New York City, Chapter 403, Laws of 1983 as amended by Chapter 102, Laws of 1984 and Operational Bulletin 84–1, it is

ORDERED, that this administrative appeal be, and the same hereby is granted in part; that the orders of the District Rent Administrator be, and the same hereby are modified consistent with the findings herein, as reflected in the attached Schedule of Rent Increases; and that as so modified said orders be, and the same hereby are affirmed; and it is further

ORDERED, that the tenants may pay any arrears in rent resulting from this order in six equal monthly installments.

ISSUED May 14, 1985

s/Manuel Mirabal
MANUEL MIRABAL
Deputy Commisioner

C.J.R. No. 213
CPLAO 897/911
444 E. 52 St.

RENT ADJUSTMENT SCHEDULE

Apartment No.	Amount of Increase	New Rent (without fuel cost adjustment)	Effective Date of Increase
1F	$ 38.75	$555.37	12/26/82
	41.65	597.02	12/26/83
	44.78	641.80	12/26/84
	48.14	689.94	12/26/85
	51.75	741.69	12/26/86
	44.05	785.74	12/26/87
2E	20.97	339.65	12/26/82
3D	28.13	403.26	12/26/82
	30.24	433.50	12/26/83
	32.51	466.01	12/26/84
	34.95	500.96	12/26/85
	37.57	538.53	12/26/86
	27.75	566.28	12/26/87
3F	110.23*	526.82	12/26/82
	39.51	566.33	12/26/83
	42.47	608.80	12/26/84
	45.66	654.46	12/26/85
	49.08	703.54	12/26/86
	52.77	756.31	12/26/87
	44.72	801.03	12/26/88
4C	51.05	731.77	12/26/82
	54.88	786.65	12/26/83
	42.89	829.54	12/26/84

*The Rent Regulations, 9 NYCRR 2202.3d(2), provide that the 7½ percent limitation may be waived by the Administrator where a greater increase is necessary to make the earned income from the property equal to its operating expenses.

4E	20.36	291.78	12/26/82
	21.88	313.66	12/26/83
	23.52	337.18	12/26/84
	10.10	347.28	12/26/85
4F	51.05	731.77	12/26/82
	54.88	786.65	12/26/83
	59.00	845.65	12/26/84
	63.42	909.07	12/26/85
	40.65	949.72	12/26/86
5F	51.48	737.87	12/26/82
	55.34	793.21	12/26/83
	25.11	818.32	12/26/84
6A	45.69	654.91	12/26/82
	49.12	704.03	12/26/83
	52.80	756.83	12/26/84
	56.76	813.59	12/26/85
	61.02	874.61	12/26/86
	65.60	940.21	12/26/87
	34.46	974.67	12/26/88
6B	17.10	245.17	12/26/82
	18.39	263.56	12/26/83
	19.77	283.33	12/26/84
	21.25	304.58	12/26/85
	22.84	327.42	12/26/86
	16.81	344.23	12/26/87
6F	51.90	743.94	12/26/82
	55.80	799.74	12/26/83
	54.75	854.49	12/26/84
7C	50.08	717.77	12/26/82
	53.83	771.60	12/26/83
	57.87	829.47	12/26/84
	22.99	852.46	12/26/85

7D	29.51	442.94	12/26/82
	31.72	454.66	12/26/83
	34.10	488.76	12/26/84
	36.66	525.42	12/26/85
	39.41	564.83	12/26/86
	42.36	607.19	12/26/87
	4.91	612.10	12/26/88
8E	35.50	508.77	12/26/82
	38.16	546.93	12/26/83
	10.15	557.08	12/26/84
PH-N	531.51	1621.04	12/26.82
	121.58	1742.62	12/26/83
	130.70	1873.32	12/26/84
	140.50	2013.82	12/26/85
	151.04	2164.86	12/26/86
	162.36	2327.22	12/26/87
	126.70	2453.92	12/26/88

The Rent Regulations, 9 NYCRR 2202.3d(2), provide that the 7½ percent limitation may be waived by the Administrator where a greater increase is necessary to make the earned income from the property equal to its operating expenses.

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
17 John Street
New York, New York 10038

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF :J.R. No. 213A

Administrative Appeal

NORMAN PECK :Docket Nos. CPLAO 912/924

:D.R.O. Docket Nos.

Petitioner : 2AO 40679/691

- x

ORDER AND OPINION GRANTING IN PART ADMINISTRATIVE APPEAL AFTER REOPENING PROCEEDING PURSUANT TO JUDGMENT OF COURT AND RENT ADJUSTMENT SCHEDULE

On September 30, 1983 the above-named petitioner-landlord filed Appeals against Orders issued on August 29, 1983 by the District Rent Administrator of the Lower Manhattan District Rent Office, concerning the housing accommodations known as 325 West End Avenue, New York, New York, Various Accommodations.

Subsequent thereto, the petitioner-landlord filed a petition in the Supreme Court pursuant to Article 78 of the

Civil Practice Law and Rules requesting that the Orders of the District Rent Administrator be modified, since the protests were deemed denied by operation of law.

On June 18, 1984 an order was signed by Mr. Justice Eugene R. Wolin remitting the proceeding to the Division of Housing and Community Renewal for consideration on the merits.

On September 19, 1984 the Commissioner issued an order and opinion denying the landlord's administrative appeals.

Thereafter, the landlord filed another petition for judicial review requesting that the order of the Commissioner be annulled.

Subsequent thereto an order was entered remitting the proceedings to this Department for further consideration.

On January 29, 1985 the Commissioner issued an order reopening these proceedings for further consideration.

The landlord, the owner of unsold shares in the subject cooperatively owned building, filed an application on December 22, 1982 for increases in the maximum rents of the various accommodations, which were being occupied by tenants who had not purchased the shares allocated therefor. In the application it was requested that the 1982/83 equalized assessed valuation of the subject building, $2,455,600.00, be used as the valuation base for calculating the increases.

On August 29, 1983, the District Rent Administrator issued orders using as the valuation base the sales price of $1,300,000.00, which was paid upon acquisition of the property on July 28, 1966. The adjustments ordered were gov-

erned by the limitation of no increases being greater than 7-1/2 percent per year, in accordance with the applicable provisions of the Rent Law and Regulations, 9 NYCRR Sec- tions 2201.6 and 2202.3(d).

In his appeal, and reiterated in the Article 78 petition for judicial review, the landlord contends, in substance, that utilizing the 1966 purchase price, rather than the equalized assessed valuation, and limiting the adjustments to 7-1/2 percent per year, were arbitrary and capricious and constituted an unconstitutional taking of property without due process of law.

After a careful reconsideration of the entire evidence of record, the Commissioner is of the opinion that this administrative appeal should be granted in part.

The landlord challenges, as arbitrary and capricious, the use of a 1966 sales price as the valuation base, and contends that rent adjustments necessary for the landlord to earn a return of 8-1/2 percent on capital value should have been computed based on the equalized assessed valuation of the subject building.

The applicable provision of the Rent Law and Regulations (9 NYCRR Section 2202.8) allows a landlord to seek rent increases when the premises are not providing " . . . a return of 8 1/2 percent on capital value which (except as provided in paragraphs b and c of this section) shall be the equalized assessed value . . .". Paragraph c provides that where there has been a bona fide sale of the property since February 1, 1961, the purchase price may be used as the valuation base. (Emphasis supplied).

The use of a sales price, rather than the equalized assessed valuation of the property, is premised on the as-

sumption that the sales price may be a more useful index of value.

Upon reconsideration of the facts in this particular proceeding, the Commissioner is of the opinion and finds that the price paid for the subject premises 16 years prior to the time the instant application was filed does not accurately reflect the real value of the subject premises; and that the 1982/83 equalized assessed value of $2,455,600.00, is the more appropriate index of value in this proceeding. Accordingly, hardship grants have been recalcu- lated, as reflected in the attached schedule, using the 1982/83 equalized assessed value of the subject premises as the valuation base.

The Regulations (9 NYCRR Section 2202.2) further provide, in pertinent part, that where a hardship grant is based upon the assessed value of the building, and no order is issued within four months of the date of the application, the increase shall be effective and collectible four months from the date of the filing of the application (rather than eight months when the purchase price is used). In view of the fact that the recomputed hardship adjustments are predicated on the equalized assessed value of the subject premises, rather than the purchase price, the effective date of the District Rent Administrator's orders (and subsequent anniversary dates thereof) have also been changed from August 22, 1983 to April 22, 1983 as reflected in the attached schedule.

The landlord further contends that limiting collectible increases to 7-1/2 percent per year amounts to an unconstitutional taking of property without due process of law. The legislature of the State of New York, as set forth in Section 2 of the State Enabling Act and reiterated by the City Council of the City of New York, found that preventive action was imperative to regulate and control residential rents and evictions

to avoid disruptive practices and abnormal conditions which would produce serious threats to the public health safety and general welfare. In enacting the Omnibus Housing Act of 1983 (Chapter 403 of the Laws of 1983 as amended) the State Legislature gave renewed recognition to the serious public housing emergency which continues to exist in New York.

The applicable regulations, under which the landlord herein sought relief in the first instance, limits with certain exceptions the collectibility of hardship and maximum base rent increases or both in combination to no more than 7-1/2 percent in one calendar year. Said regulations are in conformity with State and Local Laws, the constitutionality of which have been upheld by the courts as a valid exercise of the police power of the State, consistent with the need to prevent speculative, unwarranted and abnormal rent increases.

Therefore, in accordance with the provisions of the Rent and Eviction Regulations for New York City, Chapter 403, Laws of 1983 as amended by Chapter 102, Laws of 1984 and Operational Bulletin 84-1, it is

ORDERED, that this administrative appeal be, and the same hereby is granted in part; that the orders of the District Rent Administrator be, and the same hereby are modified consistent with the findings herein, as reflected in the attached Schedule of Rent Increases; and that as so modified said orders be, and the same hereby are affirmed; and it is further

ORDERED, that the tenants may pay any arrears in rent resulting from this order in six equal monthly installments.

ISSUED May 14, 1985

s/Manuel Mirabal
MANUEL MIRABAL
Deputy Commissioner

325 West End Avenue C.J.R. No. 213A:

CPLAO 912/924

RENT ADJUSTMENT SCHEDULE

Apartment No.	Amount of Increase	New Rent (without Fuel Cost Adjustment)	Effective Date of Rent Increase
2D	$ 82.15*	$630.49	4/22/83
	47.29	677.78	4/22/84
	50.83	728.61	4/22/85
	54.65	783.26	4/22/86
	58.74	842.00	4/22/87
	63.15	905.15	4/22/88
	65.14	970.29	4/22/89
3D	$100.97*	$641.38	4/22/83
	48.10	689.48	4/22/84
	51.71	741.19	4/22/85
	55.59	796.78	4/22/86
	59.76	856.54	4/22/87
	64.24	920.78	4/22/88
	65.88	968.66	4/22/89
4A	$ 58.68	$841.07	4/22/83
	63.08	904.15	4/22/84
	67.81	971.96	4/22/85
	72.90	1044.86	4/22/86
	78.36	1123.22	4/22/87
	10.81	1134.03	4/22/88
4C	$ 45.04*	$416.69	4/22/83
	31.25	447.94	4/22/84
	33.60	481.54	4/22/85
	36.12	517.66	4/22/86
	38.82	556.48	4/22/87
	41.74	598.22	4/22/88
	43.18	641.40	4/22/89

*The Rent Law and Regulations, 9NYCRR Section 2202.3d(2), provide that the 7½ percent limitation may be waived by the Administrator where a greater increase is necessary to make the earned income from the property equal to its operating expenses.

4D	$ 49.46	$708.89	4/22/83
	53.17	762.06	4/22/84
	57.15	819.21	4/22/85
	61.44	880.65	4/22/86
	66.05	946.70	4/44/87
	71.00	1017.70	4/22/88
	1.72	1019.42	4/22/89
6A	$141.12*	$761.21	4/22/83
	57.09	818.30	4/22/84
	61.37	879.67	4/22/85
	65.98	945.65	4/22/86
	70.92	1016.57	4/22/87
	76.24	1092.81	4/22/88
	73.97	1166.78	4/22/89
6B	$ 95.75*	$596.89	4/22/83
	44.77	641.66	4/22/84
	48.12	689.78	4/22/85
	51.73	741.51	4/22/86
	55.61	797.18	4/22/87
	59.78	856.90	4/22/88
	57.87	914.77	4/22/89
7A	$ 71.05	$1018.34	4/22/83
	76.38	1094.72	4/22/84
	82.10	1176.82	4/22/85
	22.71	1199.53	4/22/86
8D	$182.85*	$761.21	4/22/83
	57.09	818.30	4/22/84
	61.37	879.67	4/22/85
	65.98	945.65	4/22/86
	70.92	1016.57	4/22/87
	76.24	1092.81	4/22/88
	73.97	1166.78	4/22/89

*The Rent Law and Regulations, 9NYCRR Section 2202.3d(2), provide that the 7½ percent limitation may be waived by the Administrator where a greater increase is necessary to make the earned income from the property equal to its operating expenses.

9C	$ 41.57	$595.85	4/22/83
	44.69	640.54	4/22/84
	48.04	688.58	4/22/85
	51.64	740.22	4/22/86
	55.52	795.74	4/22/87
	9.41	805.15	4/22/88
10C	$ 39.36	$564.12	4/22/83
	42.31	606.43	4/22/84
	45.48	651.91	4/22/85
	48.89	700.80	4/22/86
	52.56	753.36	4/22/87
	56.50	809.86	4/22/88
	11.66	821.52	4/22/89
11C	$ 40.83	$585.25	4/22/83
	43.89	629.14	4/22/84
	47.19	676.33	4/22/85
	50.72	727.05	4/22/86
	54.53	781.52	4/22/87
	58.62	840.20	4/22/88
	14.07	854.27	4/22/89
12D	$ 63.21	$906.06	4/22/83
	67.95	974.01	4/22/84
	73.05	1047.06	4/22/85
	78.53	1125.59	4/22/86
	84.42	1210.01	4/22/87
	55.02	1265.03	4/22/88

STATE OF NEW YORK
DIVISION OF HOUSING AND COMMUNITY RENEWAL
OFFICE OF RENT ADMINISTRATION
17 John Street
New York, New York 10038

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IN THE MATTER OF THE ADMINISTRATIVE APPEAL OF :J.R. No. 213B

Administrative Appeal
NORMAN PECK :Docket Nos. CPLAO
PETER SHARP 925/943
JEROME GREENE

:D.R.O. Docket Nos.
Petitioner : 2AO 40660/678

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ORDER AND OPINION GRANTING IN PART ADMINISTRATIVE APPEAL AFTER REOPENING PROCEEDING PURSUANT TO JUDGMENT OF COURT AND RENT ADJUSTMENT SCHEDULE

On October 7, 1983 the above-named petitioner-landlord filed Appeals against Orders issued on September 8, 1983 by the District Rent Administrator of the Lower Manhattan District Rent Office, concerning the housing accommodations known as 44 Gramercy Park North, New York, New York, Various Accommo-dations.

Subsequent thereto, the petitioner--landlord filed a petition in the Supreme Court pursuant to Article 78 of the

Civil Practice Law and Rules requesting that the Orders of the District Rent Administrator be modified, since the protests were deemed denied by operation of law.

On May 11, 1984 an order was signed by Mr. Justice Burton S. Sherman remitting the proceeding to the Division of Housing and Community Renewal for consideration on the merits.

On September 19, 1984 the Commissioner issued an order and opinion denying the landlord's administrative appeals.

Thereafter, the landlord filed another petition for judicial review requesting that the order of the Commissioner be annulled.

Subsequent thereto an order was entered remitting the proceedings to this Department for further consideration.

On January 29, 1985 the Commissioner issued an order reopening these proceedings for further consideration.

The landlord, the owner of unsold shares in the subject cooperatively owned building, filed an application on December 3, 1982 for increases in the maximum rents of the various accommodations, which were being occupied by tenants who had not purchased the shares allocated therefor. In the application it was requested that the 1982/83 equalized assessed valuation of the subject building, $2,203,024.00, be used as the valuation base for calculating the increases.

On September 8, 1983, the District Rent Administrator issued orders using as the valuation base the sales price of $1,055,000.00 which was paid upon acquisition of the property on March 1, 1965. The adjustments ordered were governed by the limitation of no increases being greater than

7-1/2 percent per year, in accordance with the applicable provisions of the Rent Law and Regulations, 9 NYCRR Sections 2201.6 and 2202.3(d).

In his appeal, and reiterated in the Article 78 petition for judicial review, the landlord contends, in substance, that utilizing the 1965 purchase price, rather than the equalized assessed valuation, and limiting the adjustments to 7-1/2 percent per year, were arbitrary and capricious and constituted an unconstitutional taking of property without due process of law.

After a careful reconsideration of the entire evidence of record, the Commissioner is of the opinion that this administrative appeal should be granted in part.

The landlord challenges, as arbitrary and capricious, the use of a 1966 sales price as the valuation base, and contends that rent adjustments necessary for the landlord to earn a return of 8-1/2 percent on capital value should have been computed based on the equalized assessed valuation of the subject building.

The applicable provision of the Rent Law and Regulations (9 NYCRR Section 2202.8) allows a landlord to seek rent increases when the premises are not providing " . . . a return of 8-1/2 percent on capital value which (except as provided in paragraphs b and c of this section) shall be the equalized assessed value . . . ". Paragraph c provides that where there has been a bona fide sale of the property since February 1, 1961, the purchase price may be used as the valuation base. (Emphasis supplied).

The use of a sales price, rather than the equalized assessed valuation of the property, is premised on the assumption that the sales price may be a more useful index of value.

Upon reconsideration of the facts in this particular proceeding, the Commissioner is of the opinion and finds that the price paid for the subject premises 17 years prior to the time the instant application was filed does not accurately reflect the real value of the subject premises; and that the 1982/83 equalized assessed value of $2,203,024.00 is the more appropriate index of value in this proceeding. Accordingly, hardship grants have been recalculated, as reflected in the attached schedule, using the 1982/83 equalized assessed value of the subject premises as the valuation base.

The Regulations (9 NYCRR Section 2202.2) further provide, in pertinent part, that where a hardship grant is based upon the assessed value of the building, and no order is issued within four months of the date of the application, the increase shall be effective and collectible four months from the date of the filing of the application (rather than eight months when the purchase price is used). In view of the fact that the recomputed hardship adjustments are predicated on the equalized assessed value of the subject premises, rather than the purchase price, the effective date of the District Rent Administrator's orders (and subsequent anniver-sary dates thereof) have also been changed from September 8, 1983 to April 3, 1983 as reflected in the attached schedule.

The landlord further contends that limiting collectible increases to 7-1/2 percent per year amounts to an unconstitutional taking of property without due process of law. The legislature of the State of New York, as set forth in Section 2 of the State Enabling Act and reiterated by the City Council of the City of New York, found that preventive action was imperative to regulate and control residential rents and evictions to avoid disruptive practices and abnormal conditions which would produce serious threats to the public health safety and general welfare. In enacting the Omnibus Housing Act of

1983 (Chapter 403 of the Laws of 1983 as amended) the State Legislature gave renewed recognition to the serious public housing emergency which continues to exist in New York.

The applicable regulations, under which the landlord herein sought relief in the first instance, limits with certain exceptions the collectibility of hardship and maximum base rent increases or both in combination to no more than 7-1/2 percent in one calendar year. Said regulations are in conformity with State and Local Laws, the constitutionality of which have been upheld by the courts as a valid exercise of the police power of the State, consistent with the need to prevent speculative, unwarranted and abnormal rent increases.

Therefore, in accordance with the provisions of the Rent and Eviction Regulations for New York City, Chapter 403, Laws of 1983 as amended by Chapter 102, Laws of 1984 and Operational Bulletin 84-1, it is

ORDERED, that this administrative appeal be, and the same hereby is granted in part; that the orders of the District Rent Administrator be, and the same hereby are modified consistent with the findings herein, as reflected in the attached Schedule of Rent Increases; and that as so modified said orders be, and the same hereby are affirmed; and it is further

ORDERED, that the tenants may pay any arrears in rent resulting from this order in six equal monthly installments.

ISSUED May 14, 1985

s/Manuel Mirabal
MANUEL MIRABAL
Deputy Commissioner

44 Gramercy Park North
RENT ADJUSTMENT SCHEDULE J.R. 213B; CPLAO 925/43

Apt. No.	Amount Of Increase	New Rent (Without Fuel Cost Adjustment)	Effective Date of Increase
2C	$ 43.23	$619.58	4/3/83
	46.47	666.05	4/3/84
	49.95	716.00	4/3/85
	41.73	757.73	4/3/86
2E	26.63	381.64	4/3/83
	28.62	410.26	4/3/84
	17.98	428.24	4/3/85
3F	27.16	389.35	4/3/83
	29.20	418.55	4/3/84
	31.39	449.94	4/3/85
	1.56	451.50	4/3/86
4A	37.37	535.58	4/3/83
	16.71	552.29	4/3/84
5A	37.11	531.90	4/3/83
	28.16	560.06	4/3/84
6A	44.46*	552.38	4/3/83
	41.43	593.81	4/3/84
	44.54	638.35	4/3/85
	47.88	686.23	4/3/86
	51.47	737.70	4/3/87
	53.33	793.03	4/3/88
	26.73	819.76	4/3/89

*The Rent Law and Regulations, 9NYCRR Section 2202.3d(2), provide that the 7½ percent limitation may be waived by the Administrator where a greater increase is necessary to make the earned income from the property equal to its operating expenses.

Apt. No.	Amount Of Increase	New Rent (Without Fuel Cost Adjustment)	Effective Date of Increase
7D	$ 33.01	$473.20	4/3/83
	35.49	508.69	4/3/84
	4.83	513.52	4/3/85
8E	31..21	447.35	4/3/83
	33.55	480.90	4/3/84
	7.50	488.40	4/3/85
9A	39.19	561.66	4/3/83
	42.12	603.78	4/3/84
	45.28	649.06	4/3/85
	48.68	697.74	4/3/86
	52.33	750.07	4/3/87
	23.17	773.24	4/3/88
9D	31.86	456.67	4/3/83
	34.25	490.92	4/3/84
	36.82	527.74	4/3/85
	1.29	529.03	4/3/86
10C	44.80	642.07	4/3/83
	48.16	690.23	4/3/84
	51.77	742.00	4/3/85
	54.49	796.49	4/3/86

Apt. No.	Amount Of Increase	New Rent (Without Fuel Cost Adjustment)	Effective Date of Increase
10E	$ 29.39	$421.28	4/3/83
	31.60	452.88	4/3/84
	33.97	486.85	4/3/85
	11.17	498.02	4/3/86
10F	30.79	441.32	4/3/83
	33.10	474.42	4/3/84
	31.34	505.76	4/3/85
11A	39.91	572.08	4/3/83
	42.91	614.99	4/3/84
	46.12	661.11	4/3/85
	43.58	710.69	4/3/86
	50.97	761.66	4/3/87
12C	35.64	510.88	4/3/83
	38.32	549.20	4/3/84
	41.19	590.39	4/3/85
	23.93	614.32	4/3/86
14B	41.00	587.73	4/3/83
	44.07	631.80	4/3/84

Apt. No.	Amount Of Increase	New Rent (Without Fuel Cost Adjustment)	Effective Date of Increase
15B	$ 33.70	$483.08	4/3/83
	36.23	519.31	4/3/84
	38.95	558.26	4/3/85
	41.87	600.13	4/3/86
	39.41	639.54	4/3/87
15D	33.76	483.86	4/3/83
	36.29	520.15	4/3/84
	39.01	559.16	4/3/85
	11.94	601.10	4/3/86
	20.99	622.09	4/3/87
16A	38.22	547.87	4/3/83
	41.09	588.96	4/3/84
	44.17	633.13	4/3/85
	43.23	676.36	4/3/86

No. 87-1212

Supreme Court, U.S.
FILED
MAR 17 1988
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1987

In the Matter of the Application of JEROME GREENE, NORMAN PECK, AND PETER SHARP,
Appellants,
against
MANUEL MIRABEL, DEPUTY COMMISSIONER, NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL,
Appellee.
New York County Clerk's Index No. 16717/85

In the Matter of the Application of JEROME GREENE, NORMAN PECK, AND PETER SHARP,
Appellants,
against
MANUEL MIRABEL, DEPUTY COMMISSIONER, NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL,
Appellee.
New York County Clerk's Index No. 16718/85

In the Matter of the Application of NORMAN PECK,
Appellant,
against
MANUEL MIRABEL, DEPUTY COMMISSIONER, NEW YORK STATE DIVISION OF HOUSING AND COMMUNITY RENEWAL,
Appellee,
VICTOR BONOMO, CHARLES HERMAN, JOHN D. GREEN, LAZAR AND LEA GOTTFRIED, BERNARD GOLDEN, RAY BERMAN, HOWARD SHAVEL, JAMES L. MARCUS, HYMAN SUTTON, MICHAEL FREEDMAN, LESTER LOCKWOOD, PAUL WEISSMAN AND SONIA REESE,
Appellants.
New York County Clerk's Index No. 16719/85

ON APPEAL FROM THE SUPREME COURT, STATE OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

MOTION TO DISMISS OR AFFIRM

DENNIS HASHER
New York State Division of
Housing and Community Renewal
1 Fordham Plaza
Bronx, NY 10058
(212) 519-5719

JAN C. ROSE
Of Counsel

MOTION TO DISMISS OR AFFIRM
QUESTIONS PRESENTED

1. Whether the New York State Court of Appeals properly dismissed, sua sponte, appellants' appeal upon the ground that no substantial consitutional question is directly involved.

2. Whether the Appellate Division, First Department of New York properly rejected appellants' contention that the New York City Rent Control laws, by limiting rent increases based purely upon financial return to these appellants from their unsold cooperative shareholder interests in rent controlled apartments to seven and one half percent (7 1/2%) per annum, constitutes a taking without just compensation, by affirming the .

determination of the Supreme Court of the State of New York.

3. Whether the state in the exercise of its police power to protect the public welfare, in the face of an acute housing shortage, by regulating rents in residential dwellings in order to prevent the exaction of unjust unreasonable and oppressive rents, has enacted a rent control plan that is rationally related to legitimate state interest.

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PRELIMINARY STATEMENT

Appellee moves to dismiss the appeal taken to this Court from the final order and judgment of the Appellate Division, First Department of New York entered in this action on April 7, 1987, or in the alternative to affirm said order. The New York Court of Appeals twice refused to review the matter. (infra.)

OPINIONS BELOW

The decision of the Supreme Court, New York County, was not reported, but a copy of the transcript of the oral argument is reproduced in the appellant's appendix (App. A, pp. 1a-10a).

The Appellate Division, First Department, by order dated April 7, 1987, affirmed without opinion, a copy of that order is reproduced in the appellant's appendix (App. B.)

The New York Court of Appeals, by order dated July 9, 1987, dismissed the appellant's notice of appeal, sua sponte, upon the ground that no substantial constitutional question was directly involved. A copy of that order is reproduced in the appellant's appendix (App. C).

Appellants' motion for leave to appeal to the New York Court of Appeals was denied by order dated October 13, 1987, a copy of which is reproduced in the appellants' appendix (App. D).

JURISDICTION

Appellants' claim that this Court may take jurisdiction pursuant to 28 U.S. Code §1257 (2) and 2101(c).

ARGUMENT

This case does not raise a substantial federal question warranting an appeal to the United States Supreme Court.

The United States Supreme Court has previously and consistently rejected the contentions made by appellants that the rent regulatory laws constitute a taking of property without just compensation, and appellants have failed to provide any reason for a different conclusion in the case at bar. See Kaplan v. Prince, 444 U.S. 938, 62 L.Ed. 2d 304 (1979) which this Court dismissed for want of a substantial federal question. Rather, Appellants would ask this Court to overturn state legislation because it

does not allow them to make as much of an immediate profit on their cooperative shareholder interests in as yet unsold apartments as they would like. In demanding instantaneous achievement of the statutory return the shareholders would ask this Court to ignore the pronouncements of both the New York State Legislature in L. 1962, Ch. 21, Sec. 1(2) (State Enabling Act):

> The legislature hereby finds that a serious public emergency continues to exist in the housing of a considerable number of persons in the state of New York which emergency was created by war, the effects of war and the aftermath of hostilities; that such emergency necessitated the intervention of federal, state and local government in order to prevent speculative, unwarranted and abnormal increases

> in rents; that there continues to exist an acute shortage of dwellings; that unless residential rents and evictions continue to be regulated and controlled, disruptive practices and abnormal conditions will produce serious threats to the public health, safety and general welfare..." (emphasis added)

and the City Council of New York in N.Y.C. Admin. Code Title Y, Ch. 51, Sec. 1.0 which is nearly a verbatim reiteration of Sec. 1(2) of L. 1962, Ch. 21.

A. Emergency Situation Continues to Exist

Moreover, it should be emphasised that every few years New York State legislative action has passed and extended the period of rent control after surveys, public hearings, and

other legislative consideration of the continued need for rent control by reason of the extreme shortage of housing. The most recent of these finding a continued need for rent control is, Chapter 65 of 1987 Session Laws, effective May 13, 1987 extending the provisions of the emergency housing rent control law by stating, "The provisions of this act, and all regulations, orders and requirements thereunder shall remain in full force and effect until and including June fifteenth, nineteen hundred eighty nine". (Emphasis added).

B. Statutory Limitations

The Appellants herein, owners of shares of stock in cooperative corporations attributable to certain

unsold rent-controlled apartments, request rent increases above the annual increments of 7 1/2% to be immediately collectible, statutory provisions to the contrary notwithstanding.

Appellants complaint, despite any characterization to the contrary, is only the latest of perennial attacks on rent control instigated and financed by real estate interests. It is moreover argued that the Appellee adopted a certain "methodology" in administering the rent laws. The Division of Housing and Community Renewal did not adopt sua sponte a yearly limitation on allowable rent increases, rather it is following the statutorily prescribed limit. Appellants apparently hope to have the Courts substitute their own judicially

fashioned system of rent controls to replace that designed and enacted by the legislature.

The rent control laws for the City of New York provide, since the enactment of L. L. 30 of 1970, for a statutory limitation of 7 1/2% per year, as the rate at which rents of rent-controlled apartments may escalate. A pertinent exception to this limitation is allowed in those instances where a greater increase is necessary to bring the earned income of the "property" at least to a level equal to its operating expenses. The rent agency herein, ordered increases in the rents of the unsold, tenant occupied rent controlled apartments in these cooperatively owned buildings up to the statutory 7 1/2 %

per annum limitation on rent increases and beyond 7 1/2% in those apartments where the particular individual operating expenses exceeded earned income.

The system does not produce an irrational result or deprive appellants of their constitutional rights, but seeks to balance the interests of landlords while preventing precipitous rent hikes in order to prevent uncertainty, hardship and dislocation to tenants.

Local Law 30 of 1970 for the City of New York, was enacted to amend the rent law and introduced the concept of ongoing annual rent increases to the rent control system. This system (MBR)

is designed to bring about the massive delivery of new and higher rents, to prevent disinvestment by landlords, and yet to prevent wholesale tenant dislocation by virtue of precipitous rent increases. Mayer v. City Rent Agency, 46 N.Y. 2d 139 at 145, 412 N.Y.S. 2d 867, at 869. Pursuant to the law, as amended, combined rent increases under the provisions of the MBR system (N.Y.C. Admin. Code, Section Y51-5.0a(3), the City Rent Law) and the "Net Annual Return" (hardship) provisions of the law (Section Y51-5.0g(1)(a), may not exceed 7 1/2% per year, with specified exceptions. The City Council in amending the New York City rent law was mindful of the balance to be struck during the continuing housing emergency between the need to protect the citizens of New York

City from excessive inflationary rates of rent increase along with the need to allow landlords rent increases to permit the attainment of an 8 1/2% rate of return on the capital value of their property. 89 Christopher Inc.v. Joy, 35 N.Y. 2d 213, at 217, 360 N.Y. S. 2d 612 at 615.

As noted, the rent laws even make provision for a situation where a landlord operates at a loss to obtain rent increases in excess of 7 1/2% per year.

Section 2202.3(d)(2) of the Rent Regulations (formerly, Section 33d(2), specifically provides for the waiver of the limitation where a greater increase is necessary to make the earned income

of the property equal to its operating expenses.

Relevant provisions of the Rent and Eviction Regulations for New York City mirror the 7 1/2% increase limitation of the law. Thus, Section 2201.6 (9 N.Y.C.R.R. 2201.6), formerly Section 26, provides:

> (a)(1) No new maximum rent established pursuant to section 2201.4 of this Part, or adjustment pursuant to section 2201.5, 2202.7, 2202.8, 2202.9 or 2202.10 of this Title, or any combination thereof, shall increase the rent collectible from a tenant in occupancy by more than 7 1/2% in any one calendar year, except as provided in section 2202.7 of this Title.

Like its counterpart in the Rent Control Law, the "Return on Capital Value" provisions of the Rent Regulation does not contemplate an immediate, disruptive, and precipitous jump in a protected tenant's rent to permit achievement of an instantaneous 8 1/2% return on capital value. Rather, a landlord is to file an application for "an increase in maximum rents," statutorily limited in applicability by Section 2201.6 of the implementing Regulations (supra), only when he is not receiving rental income sufficient to attain a return of 8 1/2% on capital value. 241 East 22nd St. Corporation v. City Rent Agency, 33 N.Y. 2d 138 at 143, 350 N.Y.S. 2d 631 at 638. See Section 2202.8 Return on Capital Value.

Here the appellants would have this Court focus on but one aspect of the rent control program rather than the overall aim of establishing a system in which building rents reflect the costs of properly operating maintaining and financing buildings, as well as upgrading the housing stock by tying rent increases to acceptable maintenance standards.

C. Police Power as basis of rent controls.

In Bowles v. Willingham, 321 U.S. 503, 88 L.Ed 892 (1944), the Court upheld the constitutional validity of the federal rent control system as a valid exercise of the police power, even if some landlords would thereby not only not receive a "fair and equitable"

return, but would actually suffer economic losses as well as depreciation in the value of their property.

Only recently this Court again had an opportunity to review a constitutional challenge on a California rent ordinance in Pennell v. City of San Jose, decided February 24, 1988, rejecting the appellant's claims under the Due Process and Equal Protection Clauses of the 14th Amendment, specifically stating:

> We also find that the Ordinance does not violate the Amendment's Equal Protection Clause. Here again, the standard is deferential; appellees need only show that the classification scheme embodied in the Ordinance is "rationally related to a legitimate state interest."

Demonstrably the New York City system is completely distinguishable from the "San Jose" formula which takes into consideration the tenant's hardship. The New York City Rent and Rehabilitation Law contains a reasonable classification related to the legislative purpose sought to be achieved, and is applied equally. Every landlord of a rent-controlled apartment in the context of the underlying proceeding herein is subject to a 7 1/2% per annum limitation on rent increases and every landlord is entitled to the benefit of the same exceptions should he qualify for them under standards applicable to all.

The rent control law and challenged procedures, which are well settled, have been legislatively reviewed with great

care every 2-3 years since 1950, and each time with considerable public debate and with considerable participation by articulate landlord and tenant groups.

The rent control laws have also repeatedly been reviewed by the Courts and upheld as constitutional, Eisen v. Eastman, 421 F. 2d 560 (2d Cir., 1969); cert. den. 400 U.S. 841, 91 S. Ct. 82, 27 L. Ed. 2d 75 (1970); Clive Knowlson v. Joy, 78 Civ. 2685 (S.D.N.Y. Feb. 23, 1979) (not officially reported); Israel v. City Rent and Rehabilitation Administration, 235 F. Supp. 908 (S.D.N.Y. 1968); Davenport v. Berman, 68 Civ. 1984 (S.D.N.Y. July 28, 1969); aff'd 420 F. Supp. 294 (2d Cir.), cert.

den. 401 U.S. 956, 28 L.Ed. 2d 240, 91 S.Ct. 978 (1971).

D. The rent control laws do not unconstitutionally "take" property

Appellants' argument that the rate of return on investment allowed by the rent laws is so low as to amount to a "taking" in contravention of the constitutional guarantee against deprivation of property without due process, is facially illogical and specious. That constitutional guarantee protects individuals from direct governmental appropriation of property. It does not insulate one from the effects of -even consequential injuries from- lawful regulation. Basin, Inc. v. Federal Energy Admin., 552 F. 2d 931, 938 (Temp. Em. Ct. Apps. 1977), cert.

den. 434 U.S. 821; Condor Operating Co. v. Sawhill, 514 F. 2d 351 (Temp. Em. Ct. Apps. 1975), cert. den. 421 U.S. 976.

In Benson Realty Corp. v. Koch, 449 U.S. 1119, 67 L. Ed.2d 106, 101 S. Ct. 933, ruled on by this Court, appellants there as here argued ,inter alia, that the rate of return on investment allowed by the rent laws was so low as to amount to a taking in contravention of the constitutional guarantees against deprivation of property without due process of law. In Benson the New York State Court of Appeals wrote:

> On the question of unconstitutional taking, it need only be noted that plaintiff's papers contain only generalized conclusions which, however persuasive in the forum of public

> opinion, do not establish that the property of any individual property owner as been "taken" or demonstrate sufficiently to overcome the presumption of constitutionality, that rent control is the cause of what plaintiffs claim is the present plight of New York City landlords.

In a similar vein in Hartley Holding Corp. v Gabel, 13 N.Y. 2d 306, 247 N.Y.S. 2d 97 (1963), a landlord claimed he was being deprived of his property without due process where the rent law then provided for a rent increase if he were earning less than 6% of the value of his property, value being defined in the rent law. In finding that the landlord's constitutional rights were not infringed that Court ruled (Desmond, Ch. J.): "...since separate fixation of reasonable rent, landlord by landlord,

was impossible, a generally fair and equitable method of fixation on a class by class basis was adequate..." (citations omitted).

In Oriental Boulevard Co. v. Heller, 58 Misc. 2d 920, mod. 34 A.D. 2d 811, aff'd 27 N.Y. 2d 212, 265 N.E. 2d 72, appeal dismissed 91 S.Ct. 1234, 401 U.S. 986, 28 L.Ed. 2d 527, the New York State Court of Appeals in dismissing a constitutional challenge noted that "plaintiffs had the burden of overcoming that presumption by an evidentiary showing that the statute is unconstitutionally oppressive as applied to them personally..."

Nor does the case of Hall v. City of Santa Barbara, 797 F. 2d 1493 (9th Cir.,

1986), modified and reh'g en banc denied, 813 F. 2d 206 cited by appellants lend the support claimed. Rather, that matter dealt with tenants of mobile homes who received the right to a perpetual lease at a below market rental rate. Specifically the Court noted that the ordinance "directs the landlord to give tenants a lease, a recognized estate in land, lasting indefinitely. Moreover, the landlords residual rights in the property are largely at the mercy of the tenants." In that instance the Court was disturbed by the fact that the tenants were in a position to reap a windfall profit, as the ordinance restricted the park owner's ability to evict tenants or require them to remove their mobile homes from the park upon sale. The New

York rent control laws bear no relation to that system, appellants argument to the contrary not withstanding.

Appellants also rely on First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, California 107 S. Ct. 2387 (1987) in support of its proposition that rent control laws violate the constitutional protection of property rights. However, that case is also inapposite and deals with an actual "taking" of the property, denying the appellants all use thereof. Specifically the State prohibited the Church from using the property involved for a period of time. In that case this Court held that the actual "taking", although not permanent, was compensable. These instances deal with the right to use and

dispose of land. To attempt to analogize these facts to the instant case is absurd. By no stretch of the imagination is this situation similar to that in New York under the rent control laws. In the matter now before the Court there exists no "taking".

Appellants further cite Helmsley v. Borough of Fort Lee, 78 N.J. 200, 394 A.2d 65 (1978), app. dismissed, 440 U.S. 978, and Fisher v. City of Berkeley, 89 L. Ed. 2d 206, 106 S. Ct. 215. The rent control system in the City of New York is all together different from the ones found deficient in California and New Jersey. In "Helmsley" the New Jersey Supreme Court found the Fort Lee rent control ordinance provided in entirely

inadequate "hardship" mechanism similar to the one condemed in California.

The validity of the Berkeley ordinance was in question because for over 17,000 apartment rental untis there was only one part-time Board which could hold only one hearing at a time. The absolute absurdity of this scheme was spelled out at length in Birkenfeld v. City of Berkelely 17 Cal. 3d 129, 130 Cal. Rptr. 465, 550 P.2d 1001 (1976) at pp. 492-496. The result in the city of Berekeley was that all landlords (with the exception of a "lucky few") suffered an absolute, automatic indefinite rollback in rents. Thus the imposition of a rollback and freeze of indefinite duration would in many cases become confiscatory (Sup., 130 Cal. Rptr. at p.

494), an unconstitutional frustration of the purposes of the statute. As this Court said in 1986 in Fisher v. Berkeley, 89 L. Ed. 2d 206, 106, S. Ct. p. 215-217 in discussing the Berkeley finding:

> Rather, the decision stands only for the proposition that cities must couple rent control with procedures for adjusting rent ceilings to avoid fixing rents at confiscatory levels. 17 Cal. 3d, at 167-173, 550 P2d, at 1028-1033. Birkenfeld thus left Berkeley's basic power to impose rent controls unaffected.
>
> (emphasis added)

In Bucho Holding Co. v. Temporary State Housing Rent Commission, 11 N.Y. 2d 469, 230 N.Y.S. 2d 977 (1962), cited by appellants on page 17 of their brief, the New York Court of Appeals upheld as constitutional the state rent control

law, which provided for gradual rent increases with the ultimate ceiling of allowing landlords a then six percent return on capital value. It should be underscored that the City Rent Control Law at that time did not include the annual MBR increases which in conjunction with a biennial upward adjustment of MBR ceilings is a key feature of the current New York City Rent Control Law here under attack in this proceeding.

In I.L.F.Y. Co. v. City Rent and Rehabilitation Administration, 11 N.Y. 2d 480, 230 N.Y.S. 2d 986 (1962) also cited by appellants, the New York Court of Appeals specifically upheld the constitutionality of the "net annual return" provisions of the City Rent and

Rehabilitation Law, which ,inter alia, limited increases to 7 1/2% per year toward a goal of, at that time a 6% net annual return on the value of the property. Once again it should be emphasized that the law in effect at the time did not include the 1970 amendments which substantially eased rent-control restrictions. In its opinion the Court further found that landlords were not constitutionally entitled to the then 6% annual return stating specifically: "The question of the precise return to which a landlord is entitled has, as demonstrated, been the subject of constant legislative revision. The "4" and "2" return, as well as the "6" and "2" return is well within the constitutional limits - and this is so even though the "6" and "2" return must

be discounted by the enforced waiting period."

_(emphasis added)

E. Greenspan Affidavit

With regard to the Greenspan affidavit (Jurisdictional Statement p. 10) made and advanced long after the administrative record underlying the determination here under challenge was closed, the opinion of the affiant Dr. Greenspan, first surfaced upon appellants challenge to the administrative orders in the New York Supreme Court, and thus was not properly before the State Courts. Section 26-411 (Judicial Review) of the Administrative Code of the City of New York (City Rent Control Law) (formerly Section Y-51-90a(2), N.Y.C. Administrative Code). The statutory proscription translates easily

into judicially endorsed principles, succinctly restated by a unanimous Court in Matter of Fanelli v. New York Conciliation and Appeals Board et. ano, 58 N.Y. 2d 952, 460 N.Y.S. 2d 534 , 447 N.E. 2d 82 (1983), aff'g 90 A.D.2d 756, 757, 455 N.Y.S. 2d 814, 816.

Even were the law to be to the contrary and the Greenspan affidavit was to be considered, it consists of speculative and conclusory opinions which are irrelevant to the issue before the Court. Dr. Greenspan from the economists vantage point opines that "the orders of the rent control administrators...[lead to a result that]...is in effect a taking of property without due compensation.", advancing an economists predicate for

the conclusion in law which he thus arrives at.

F. New York's rent control system provides no basis for Appellants' charge that the system deprives them of their property without just compensation

We here underscore that the current rent levels of which Appellants complain and which they now seek to impermissably inflate, are due to the appellants' failure to seek allowable rent increases in prior years. Their failures and those of their predecessors in interest to seek or obtain rent adjustments in rent control both during and prior to the conversion from rental to cooperative ownership has led to their alleged need for a "quick-fix". This circumstance is hardly the fault of the

rent control laws, or the agency which administers them.

Appellants contend that had they previously applied for and obtained rent increases their circumstances would remain unchanged today. Their contention is self-serving and misleading. Earlier increase applications could well have increased their rent computation base for MBR purposes; active and timely pursuit of MBR increases could have obtained 7 1/2% rent increases for them in 1980 and 1981.

Further their inaction led to the forfeiture of rent increases both in MBR and "fuel cost passalong". In the 325 West End Avenue building they failed to

obtain the 1984 cumulative fuel cost adjustment which they were found to be entitled to, due to their failure to comply with the tenant notification procedures.

Thus through no fault of the system their current rent levels were occasioned by their own inaction. They created similar situations for themselves in both of the other buildings for which they finally sought to obtain hardship rent increases. Those acts and ommissions include but are not limited to their failure to seek and obtain rent increases, and their failure to maintain essential services thereby having not insubstantial rent decreases imposed.

They now argue before this Court that the blame for their present circumstances lies solely with the system, ignoring their own forfeitures and delinquencies.

CONCLUSION

Appellants have failed to establish a cause of action upon which relief can be predicated. Appellants have not established that they have suffered a deprivation of either their property or property rights by the application of the state's rent laws and implementing regulations to them in the granting of rent increases under the statute, and therefore have no standing, to challenge the constitutionality of the rent laws. They have in fact pleaded no facts of demonstrable deprivation of protected

constitutional rights either through the operation of the rent laws or their implementation.

Their true underlying complaint, that they simply don't like operating in a rental housing market affected by governmental regulation presents no substantial federal question warranting judicial intervention on their behalf merely to enhance the value of their shareholder interests in a cooperative corporation, in derogation of explicit and wholly valid concerns of the state legislature. Ferguson v. Skrupa, 372 U.S. 726, 733 (1963) (Harlan J., concurring); Queenside Hills Realty Co. v. Saxl, 328 U.S. 80, 82 (1946), U.S. v. Carolene Products Co., 304 U.S. 144, 154 (1938); Block v. Hirsch, 256 U.S.

135, 158 (1921); I.L.F.Y. Co. v. City Rent and Rehab. Admin., 11 N.Y. 2d 480, 230 N.Y.S. 2d 986 (1962).

The appeal should be dismissed for want of a substantial federal question, or in the alternative the order of the Appellate Division, First Department entered April 7, 1987 should be affirmed.

Dated: Bronx, New York
March , 1988

Respectfully submitted,

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Supreme Court, U.S.
FILED
MAR 25 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-1212

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1987

JEROME GREENE, NORMAN PECK AND PETER SHARP,
Appellants,

-against-

MANUEL MIRABEL, DEPUTY COMMISSIONER,
NEW YORK STATE DIVISION OF HOUSING
AND COMMUNITY RENEWAL,
Appellee,

VICTOR BONOMO, CHARLES HERMAN,
JOHN D. GREEN, LAZAR AND LEA GOTTFRIED,
BERNARD GOLDEN, RAY BERMAN, HOWARD SHAVEL,
JAMES L. MARCUS, HYMAN SUTTON, MICHAEL FREEDMAN,
LESTER LOCKWOOD, PAUL WEISSMAN AND SONIA REESE,
Appellees.

ON APPEAL FROM THE SUPREME COURT, STATE OF NEW YORK,
APPELLATE DIVISION, FIRST DEPARTMENT

BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS OR AFFIRM

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BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS OR AFFIRM

Preliminary Statement

Appellee's motion to dismiss or affirm misses the whole point of this appeal.

This case has never involved a challenge to the facial validity of rent control in New York. On the contrary, it is a challenge to a particular application of that rent control system to appellants' property in a manner which demonstrates -- beyond factual dispute -- that appellants are being deprived of the opportunity to earn a reasonable return on the capital value of their apartments.

The plain facts are these: under the pertinent New York statutes and regulations, the DHCR has determined the size of the increases in the maximum collectible rent required to allow appellants to earn 8-1/2% on capital value. The DHCR has gone further and ordered that appellants should get those increases.

But, then, instead of ordering those increases to go into effect immediately, the DHCR has limited yearly increases of rent to 7-1/2% per annum.

The net economic effect of this methodology, as we demonstrated in our Jurisdictional Statement, is to make it certain that appellants will not earn their statutory return of 8-1/2%, or even a fair return, or for that matter any return, until many years into the future, if at all.

The issue which this Court should hear and decide is whether that methodology -- applied in obedience to the New York rent control statutes -- is constitutionally valid.

The Pennell Decision

This Court's recent decision in *Pennell v. City of San Jose*, 56 U.S.L.W. 4168 (U.S. Feb. 24, 1988), does not mandate the granting of appellee's motion.

The ordinance at issue in *Pennell* established seven factors that the local administrator could consider in determining allowable rent increases. Appellants objected, on constitutional grounds, to the seventh factor which permitted consideration of the "hardship" of increases on low income tenants. As this Court noted (56 U.S.L.W. at 4170):

> In short, appellants contend, the additional reduction of rent on grounds of hardship accomplishes a transfer of the landlord's property to individual hardship tenants; the Ordinance forces private individuals to shoulder the "public" burden of subsidizing their poor tenants' housing. As appellants' point out, "[i]t is axiomatic that the Fifth Amendment's just compensation provision is 'designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.'" *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. ___, ___ (1987) (quoting *Armstrong v. United States*, 364 U.S. 40, 49 (1960)).

The Court, however, declined to consider that contention "on the present record." The Court wrote (56 U.S.L.W. at 4170):

> As things stand, there simply is no evidence that the "tenant hardship clause" has in fact ever been relied upon by a Hearing Officer to reduce a rent below the figure it would have been set at on the basis of the other factors set forth in the Ordinance. In addition, there is nothing in the Ordinance requiring that a Hearing Officer in fact reduce a proposed rent increase on grounds of tenant hardship. Section 5703.29 does make it mandatory that hardship be considered -- it states that "the Hearing Officer shall consider the economic hardship imposed on the present tenant" -- but it then goes on to state that if "the proposed increase constitutes an unreasonably severe financial or economic hardship . . . he may order that the excess of the increase" be disal-

> lowed. § 5703.29 (emphasis added). Given the "essentially ad hoc, factual inquir[y]" involved in the takings analysis, *Kaiser Aetna v. United States*, 444 U.S. 164, 175 (1979), we have found it particularly important in takings cases to adhere to our admonition that "the constitutionality of statutes ought not be decided except in an actual factual setting that makes such a decision necessary." *Hodel v. Virginia Surface Mining & Reclamation Ass., Inc.*, 452 U.S. 264, 294-95 (1981).

Here, by way of contrast, there is plenty of evidence and a precise, undisputed factual showing of the financial impact on appellants of New York's limitation of annual rent increases to 7-1/2%. 1/ We demonstrated that the 7-1/2% limitation has left appellants with virtually no return on the capital value of their apartments for an indefinite future.

Moreover, in further contrast to *Pennell*, appellants are saddled with these "returns" even though they have exhausted all their administrative remedies -- and even though the administrator of the New York system has explicitly found that much larger rent increases are needed if appellants are to be able to earn their statutory return.

In short, there could not be a clearer case of a "transfer of the landlord's property" to his tenants.

1/ In our Jurisdictional Statement, we identified Title 9, § 2201.6 of the *Official Compilation of Codes, Rules and Regulations of the State of New York* (9 NYCRR § 2201.6) as the source of the 7-1/2% limitation on rent increases under rent control. This regulation merely duplicates a statute of the City of New York, codified at § 26-405(a)(5) in the *Administrative Code of the City of New York* (Local Laws of the City of New York). (Continued)

As an example, the DHCR (the appellee) held that appellants, for Apartment 6A at 44 Grammercy Park North 2/, were entitled to a "hardship rent" of $819.76 (Record on Appeal ("RA") at 179). However, as a result of the 7-1/2% limitation, the DHCR actually allowed appellants the following rent increases (RA at 179):

Amount of Increase	Rent After Increase	Effective Date of Increase
44.46 3/	552.38	4/3/83
41.43	593.81	4/3/84
44.54	638.35	4/3/85
47.88	686.23	4/3/86
51.47	757.70	4/3/87
55.33	793.03	4/3/88
26.73	819.76	4/3/89

(Continued) The hardship provision, that gives landlords the opportunity to earn an 8-1/2% return on the capital value of their apartments, is also a statute of the City of New York in addition to being set out as a regulation at 9 NYCRR § 2202.8. It was enacted pursuant to Local Law 1970, No. 30 and then temporarily repealed pursuant to Local Law 1972, No. 24, effective January 1, 1974. That repeal was declared void by the New York Court of Appeals in *210 East 68th Street Corp. v. City Rent Agency*, 34 N.Y.2d 560, 345 N.Y.S.2d 941, 310 N.E.2d 538 (1974). Thus, the 8-1/2% hardship law, Local Law 1970, No. 30, continues to be in effect, although it does not appear in McKinney's statutory compilation of the laws of New York.

2/ The chart appearing in the Jurisdiction Statement (pp. 9-9a) sets forth financial data, similar to that appearing here for Apartment 6A Grammercy Park North, for Apartment 6A 444 East 52nd Street.

3/ The Rent Law and Regulations, 9 NYCRR § 2202.3d(2), provides that the 7-1/2 percent limitation may be waived by the Administrator where a greater increase is necessary to make the earned income from the property equal to its operating expenses. As of December 1982, the rent for apartment 6A was $525.60 per month. Based on a complete audit of appellants' books, the DHCR determined that the actual operating expenses during 1981 (one year prior to the hardship application) were $570.06 per month -- hence, a cash flow loss per month of $44.46.

Thus, appellants, based on 1981 expenses, were relegated to a return on capital value of 0% during 1983 (when the rent was brought up to a break even level), a return of 1.32% during 1984, a return of 2.73% in 1985, a return of 4.26% in 1986, a return of 5.89% in 1987, a return of 7.65% in 1988 and a return of 8.5% in 1989 (RA at 179). But even those "returns" were based on the absurd assumption that there would be no increase in operating expenses from 1981 to 1989.

In fact, the record below established that appellants' expenses had actually increased in 1982 and 1983 by an amount which exceeded the 7-1/2% rent increases. Thus, as to apartment 6A, appellants, rather than receiving a 0% return in 1983, were actually faced with a loss in excess of $1,000 based upon actual cash flow (RA 305). (For purposes of these calculations, appellants excluded debt service and presumed that their property was owned free and clear (RA 323-331.))

The record below further established that, even assuming a modest rate of inflation for operating expenses, appellants would continue to sustain an operating loss each and every year through 1989 (RA 305).

This same showing could be made for the other apartments involved on this appeal (RA 302-318, 334-344). We have no doubt it could also be made for other owners of rent controlled property in New York City. In the face of historic increases in operating expenses (including real estate taxes) and historic rates of inflation, the 7-1/2% limitation places every rent-controlled landlord under a system which insures that he will be receiving unreasonably low returns. *Compare Bowles v. Willingham*, 321 U.S. 503 (1944) (during World War II, particular landlord that suffers unreasonably low return for short period has not suffered a taking).

The undeniable -- and undenied -- proposition demonstrated by the record below is that New York's irrebuttable presumption that tenants cannot pay more than a 7-1/2% increase in rent per annum for rent controlled properties condemns these appellants, for all practical purposes, to a 0% return on the value of their property.

Our position should not be misunderstood. The statutory return in New York has been determined by the legislature to be 8-1/2% on capital value. We do not assert that we are constitutionally entitled to that return. But we do submit that, as a constitutional matter, the rent regulation system must allow landlords a return which is "reasonable." The New York rent control system, as the record below amply demonstrates, fails to do that -- not unless returns of 0%, or perhaps 1% or 2%, are to be deemed reasonable.

In these circumstances, the application of New York's statutory limitation of annual rent increases to 7-1/2% -- a limitation which applies across-the-board without regard to individual tenant "hardship" -- has clearly violated appellants' constitutional rights.

* * *

In *Pennell*, this Court recognized that a rent control scheme must (56 U.S.L.W. at 4717):

> represent[] a rational attempt to accommodate the conflicting interests of protecting tenants from burdensome rent increases while at the same time insuring that landlords are guaranteed a fair return on their investment.

The New York scheme, we submit, is clearly not such a "rational attempt." [4/]

[4/] It is undisputed that appellants' constitutional claims were squarely presented to the New York courts at every stage of the proceedings below.

Appellee's Cases

Rather than deal with the real issues on this appeal, appellee's brief reads as if it were a response to a to *per se* challenge to the constitutionality of rent control.

In consequence, the cases cited by appellee are not in point:

In *Kaplan v. Prince*, 444 U.S. 938 (1979), the landlord failed in a challenge to New York's rent control scheme on the ground that there was no longer a housing shortage.

In *Eisen v. Eastman*, 421 F.2d 560 (2d Cir. 1969), *cert. denied*, 400 U.S. 841 (1970), the landlord's constitutional challenges were rejected because of his failure to exhaust his administrative remedies.

In *Israel v. City Rent and Rehabilitation Administration*, 285 F. Supp. 908 (S.D.N.Y. 1968), the landlord's "vague and conclusory allegations" were insufficient to overcome the facial constitutionality of rent control.

In *Davenport v. Berman*, 420 F.2d 294 (2d Cir. 1969), the landlord's challenge to rent control was dismissed on jurisdictional grounds.

In *Benson Realty Corp. v. Beame*, 50 N.Y.2d 994, 431 N.Y.S.2d 475, 409 N.E.2d 948 (1980), *app. dismissed*, 449 U.S. 1119 (1981), plaintiffs' "as applied" challenge contained only generalized conclusions, which the Court thought might be persuasive in the forum of public opinion, but did not establish a taking.

In *Hartley Holding Corp. v. Gabel*, 13 N.Y.2d 306, 247 N.Y.S.2d 97, 196 N.E.2d 537 (1963), a rent control provision using equalized assessed value rather than non-equalized assessed value for purposes of computing rent increases was held to be facially constitutional.

In *Oriental Boulevard Co. v. Heller*, 27 N.Y.2d 212, 316 N.Y.S.2d 226, 265 N.E.2d 72 (1970), *app. dismissed*, 401 U.S. 986 (1971), the Court held that New York City could constitutionally regulate the use of fuel burners and refuse incinerators to control the emission of aerial pollutants.

What do any of these cases have to do with the issues on this appeal? Nothing, we submit.

Appellants here are not claiming that their property has been subjected to a "taking" merely because its value is substantially decreased by the existence of a regulated rent. Rather, on a full record "in an actual factual setting which makes a decision necessary," *Hodel v. Virginia Surface Mining and Reclamation Assn., Inc.*, 452 U.S. 264, 294–295 (1981), appellants assert that New York Law, as applied herein, and after exhaustion of all administrative remedies, condemns them to a return on the capital value of their property so low as to be unconstitutional.

CONCLUSION

For the reasons stated above and in the Jurisdictional Statement, this Court should note probable jurisdiction. Alternatively, appellants respectfully request that the Jurisdictional Statement be treated as a petition for writ of certiorari, and granted. 28 U.S.C. § 2103.

New York, New York
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Respectfully submitted,

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